

## **Chapter 10a**

### **Utah Revised Business Corporation Act**

#### **Part 1**

#### **General Provisions**

#### **16-10a-101 Short title.**

This chapter is known as the Utah Revised Business Corporation Act.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-102 Definitions.**

As used in this chapter:

- (1)
  - (a) "Address" means a location where mail can be delivered by the United States Postal Service.
  - (b) "Address" includes:
    - (i) a post office box number;
    - (ii) a rural free delivery route number; and
    - (iii) a street name and number.
- (2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.
- (3) "Assumed corporate name" means a name assumed for use in this state by a foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not available for use in this state.
- (4) "Articles of incorporation" include:
  - (a) amended and restated articles of incorporation;
  - (b) articles of merger; and
  - (c) a document of a similar import to those described in Subsections (4)(a) and (b).
- (5) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (6) "Bylaws" includes amended bylaws and restated bylaws.
- (7) "Cash" and "money" are used interchangeably in this chapter and mean:
  - (a) legal tender;
  - (b) a negotiable instrument; and
  - (c) a cash equivalent readily convertible into legal tender.
- (8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it, including printing or typing in:
  - (a) italics;
  - (b) boldface;
  - (c) contrasting color;
  - (d) capitals; or
  - (e) underlining.
- (9) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.
- (10) "Corporate name" means:

- (a) the name of a domestic corporation or a domestic nonprofit corporation as stated in its articles of incorporation; or
  - (b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its articles of incorporation or document of similar import.
- (11) "Corporation" or "domestic corporation" means a corporation for profit that:
- (a) is not a foreign corporation; and
  - (b) is incorporated under or subject to this chapter.
- (12) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-10a-103, except that delivery to the division means actual receipt by the division.
- (13)
- (a) "Distribution" means the following by a corporation to or for the benefit of its shareholders in respect of any of the corporation's shares:
    - (i) a direct or indirect transfer of money or other property, other than a corporation's own shares; or
    - (ii) incurrence of indebtedness by the corporation.
  - (b) A distribution may be in the form of:
    - (i) a declaration or payment of a dividend;
    - (ii) a purchase, redemption, or other acquisition of shares;
    - (iii) distribution of indebtedness; or
    - (iv) another form.
- (14) "Division" means the Division of Corporations and Commercial Code.
- (15) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-10a-123.
- (16) "Effective date of notice" means the date notice is effective as provided in Section 16-10a-103.
- (17) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by e-mail, facsimile, or otherwise.
- (18) "Employee" includes an officer but not a director, unless the director accepts a duty that makes that director also an employee.
- (19) "Entity" includes:
- (a) a domestic and foreign corporation;
  - (b) a nonprofit corporation;
  - (c) a limited liability company;
  - (d) a profit or nonprofit unincorporated association;
  - (e) a business trust;
  - (f) an estate;
  - (g) a partnership;
  - (h) a trust;
  - (i) two or more persons having a joint or common economic interest;
  - (j) a state;
  - (k) the United States; and
  - (l) a foreign government.
- (20) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- (21) "Governmental subdivision" means:
- (a) county;
  - (b) municipality; or

- (c) another type of governmental subdivision authorized by the laws of this state.
- (22) "Individual" means:
  - (a) a natural person;
  - (b) the estate of an incompetent individual; or
  - (c) the estate of a deceased individual.
- (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first class postage prepaid, and includes registered or certified mail for which the proper fee is paid.
- (24) "Notice" is as provided in Section 16-10a-103.
- (25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing the information, including:
  - (a) an annual report;
  - (b) an application for a certificate of authority; or
  - (c) a notice of change of principal office.
- (26) "Proceeding" includes:
  - (a) a civil suit;
  - (b) arbitration or mediation; and
  - (c) a criminal, administrative, or investigatory action.
- (27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, one or more shares entitled to vote on the transaction, except a share:
  - (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, is beneficially owned; or
  - (b) the voting of which is controlled, by:
    - (i) a director who has a conflicting interest respecting the transaction;
    - (ii) a related person of that director; or
    - (iii) a person referred to in Subsections (27)(b)(i) and (ii).
- (28) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means the writing or other document is actually received by:
  - (a) the corporation at its:
    - (i) registered office in this state; or
    - (ii) principal office;
  - (b) the secretary of the corporation, wherever the secretary is found; or
  - (c) another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.
- (29)
  - (a) "Record date" means the date established under Part 6, Shares and Distributions, or Part 7, Shareholders, on which a corporation determines the identity of its shareholders.
  - (b) The determination under Subsection (29)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (30) "Registered office" means the office within this state designated by a domestic or foreign corporation as its registered office in the most recent document on file with the division providing that information, including:
  - (a) articles of incorporation;
  - (b) an application for a certificate of authority; or
  - (c) a notice of change of registered office.
- (31) "Related person" of a director means:
  - (a) the spouse of the director;

- (b) a child, grandchild, sibling, or parent of the director;
  - (c) the spouse of a child, grandchild, sibling, or parent of the director;
  - (d) an individual having the same home as the director;
  - (e) a trust or estate of which the director or any other individual specified in this Subsection (31) is a substantial beneficiary; or
  - (f) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.
- (32) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-10a-830(3) for:
- (a) the preparation and maintenance of:
    - (i) minutes of the meetings of the board of directors and of the shareholders; and
    - (ii) the other records and information required to be kept by the corporation by Section 16-10a-830; and
  - (b) authenticating records of the corporation.
- (33) "Share" means the unit into which the proprietary interests in a corporation are divided.
- (34)
- (a) "Shareholder" means:
    - (i) the person in whose name a share is registered in the records of a corporation; or
    - (ii) the beneficial owner of a share to the extent recognized pursuant to Section 16-10a-723.
  - (b) For purposes of this chapter:
    - (i) the following, identified as a shareholder in a corporation's current record of shareholders, constitute one shareholder:
      - (A)
        - (I) three or fewer coowners; or
        - (II) in the case of more than three coowners, each coowner in excess of the first three is counted as a separate shareholder;
      - (B) a corporation, limited liability company, partnership, trust, estate, or other entity; and
      - (C) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account;
    - (ii) shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person; and
    - (iii) if the record of a shareholder is not maintained in accordance with accepted practice, an additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.
- (35) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (36) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.
- (37) "Tribal corporation" means a corporation:
- (a) incorporated under the law of a tribe; and
  - (b) that is at least 51% owned or controlled by the tribe.
- (38)
- (a) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.
  - (b) All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Amended by Chapter 249, 2008 General Session

**16-10a-103 Notice.**

- (1)
  - (a) Notice given under this chapter shall be in writing unless oral notice is reasonable under the circumstances.
  - (b) Notice by electronic transmission is written notice.
- (2)
  - (a) Subject to compliance with any requirement that notice be in writing, notice may be communicated in person, by telephone, by any form of electronic transmission, or by mail or private carrier.
  - (b) If the forms of personal notice listed in Subsection (2)(a) are impracticable, notice may be communicated:
    - (i)
      - (A) by a newspaper of general circulation in the county, or similar subdivision, in which the corporation's principal office is located; and
      - (B) by publication in accordance with Section 45-1-101;
    - (ii) by radio, television, or other form of public broadcast communication in the county or subdivision; or
    - (iii) if the corporation has no office in this state, in the manner allowed by Subsection (2)(b)(i) or (ii) but in Salt Lake County.
- (3)
  - (a) Written notice by a domestic or foreign corporation to its shareholders or directors, if in a comprehensible form, is effective as to each shareholder or director:
    - (i) when mailed, if addressed to the shareholder's or director's address shown in the corporation's current record of the shareholder or director; or
    - (ii) when electronically transmitted to the shareholder or director, in a manner and to an address provided by the shareholder or director in an unrevoked consent.
  - (b) Consent under Subsection (3)(a)(ii) is considered revoked if:
    - (i) the corporation is unable to deliver by electronic transmission two consecutive notices transmitted by the corporation based on that consent; and
    - (ii) the corporation's inability to deliver notice by electronic transmission under Subsection (3)(b)(i) is known by the:
      - (A) corporation's secretary;
      - (B) an assistant secretary or transfer agent of the corporation; or
      - (C) any other person responsible for providing notice.
  - (c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under Subsection (3)(a) as revoked does not invalidate any meeting or other act.
  - (d) Delivery of a notice to shareholders may be excused in accordance with Subsection 16-10a-705(5).
- (4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to the corporation's:
  - (a) registered agent; or
  - (b) secretary at its principal office.
- (5) Except as provided in Subsection (3), written notice, if in a comprehensible form, is effective at the earliest of the following:
  - (a) when received;

- (b) five days after it is mailed; or
- (c) on the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (6) Oral notice is effective when communicated if communicated in a comprehensible manner.
- (7) Notice by publication is effective on the date of first publication.
- (8)
  - (a) If this chapter prescribes notice requirements for particular circumstances, those requirements govern.
  - (b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

Amended by Chapter 378, 2010 General Session

**16-10a-104 Powers of the division.**

The division has the power reasonably necessary to perform the duties required of the division under this chapter.

Enacted by Chapter 277, 1992 General Session

**16-10a-120 Filing requirements.**

- (1) A document shall satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the division.
- (2) This chapter must require or permit filing the document with the division.
- (3)
  - (a) The document shall contain the information required by this chapter.
  - (b) A document may contain information in addition to that required in Subsection (3)(a).
- (4) The document shall be typewritten or machine printed.
- (5)
  - (a) The document shall be in the English language.
  - (b) A corporate name need not be in English if written in English letters, Arabic or Roman numerals.
  - (c) The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
- (6) The document shall be executed, or shall be a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed:
  - (a) by the chairman of the board of directors of a domestic or foreign corporation, by all of its directors, or by one of its officers;
  - (b) if directors have not been selected or the corporation has not been formed, by an incorporator;
  - (c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary;
  - (d) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity; or
  - (e) by an attorney in fact if the corporation retains the power of attorney with the corporation's records.

- (7) The document shall state beneath or opposite the signature of the person executing the document the signer's name and the capacity in which the document is signed.
- (8) The document may, but need not, contain:
  - (a) the corporate seal;
  - (b) an attestation by the secretary or an assistant secretary; or
  - (c) an acknowledgment, verification, or proof.
- (9) The signature of each person signing the document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes the affirmation or acknowledgment of the person, under penalties of perjury, that the document is the person's act and deed or the act and deed of the entity on behalf of which the document is executed, and that the facts stated in the document are true.
- (10) If the division has prescribed a mandatory form or cover sheet for the document under Section 16-10a-121, the document shall be in or on the prescribed form or shall have the required cover sheet.
- (11) The document shall be delivered to the division for filing and shall be accompanied by one exact or conformed copy, except as provided in Section 16-10a-1510, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.
- (12) Except with respect to a filing pursuant to Section 16-10a-1510, the document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

Amended by Chapter 378, 2010 General Session

**16-10a-121 Forms.**

- (1) The division may prescribe, and if so prescribed shall furnish on request, forms or cover sheets for documents required or permitted to be filed by this chapter as the division may determine to be appropriate.
- (2) However:
  - (a) the use of any forms or cover sheets is not mandatory unless the division specifically requires their use; and
  - (b) no requirement that a form or cover sheet be used precludes in any way the inclusion in any document of any item which is not prohibited to be included by this chapter, nor does it require the inclusion with the filed document of any item which is not otherwise required by this chapter.

Enacted by Chapter 277, 1992 General Session

**16-10a-122 Fees.**

Unless otherwise provided by statute, the division shall charge and collect fees for services as provided in Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

**16-10a-123 Effective time and date of filed documents.**

- (1) Except as provided in Subsections (2) and 16-10a-124(4), a document submitted to the division for filing under this chapter shall be considered effective at the time of filing on the date it is filed, as evidenced by the division's endorsement on the document as described in Subsection 16-10a-125(2).

- (2) Unless otherwise provided in this chapter, a document, other than an application for a reserved or registered name, may specify conspicuously on its face a delayed effective time or date, or both an effective time and date, and if it does so, the document becomes effective as specified.
  - (a) If a delayed effective time but no date is specified, the document is effective on the date it is filed, as that date is specified in the division's time and date endorsement on the document, at the later of the time specified on the document as its effective time or the time specified in the time and date endorsement.
  - (b) If a delayed effective date but no time is specified, the document is effective at the close of business on that date.
  - (c) A delayed effective date for a document may not be later than the ninetieth day after the date it is filed. If a document specifies a delayed effective date that is later than the ninetieth day after the document is filed, the document is effective on the ninetieth day after it is filed.
- (3) If a document specifies a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal, executed on behalf of the same domestic or foreign corporation originally submitting the document for filing, in the same manner as the document being withdrawn, stating:
  - (a) that the document has been revoked by appropriate corporate action or by court order or decree pursuant to Section 16-10a-1008 and is void; and
  - (b) in the case of a court order or decree pursuant to Section 16-10a-1008, that the court order or decree was entered by a court having jurisdiction of the proceeding for the reorganization of the corporation under a specified statute of the United States.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-124 Correcting filed documents.**

- (1) A domestic or foreign corporation may correct a document filed with the division if the document:
  - (a) contains an incorrect statement; or
  - (b) was defectively executed, attested, sealed, verified, or acknowledged.
- (2) A document is corrected by delivering to the division for filing articles of correction that:
  - (a) describe the document, including its filing date, or have a copy of it attached to the articles of correction;
  - (b) specify the incorrect statement and the reason it is incorrect or the manner in which the execution, attestation, sealing, verification, or acknowledgement was defective; and
  - (c) correct the incorrect statement or defective execution, attestation, sealing, verification, or acknowledgement.
- (3) Articles of correction may be executed by any person designated in Section 16-10a-120(6), or by any person who executed the document that is corrected.
- (4) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-125 Filing duty of division.**

- (1) If a document delivered to the division for filing satisfies the requirements of Section 16-10a-120, the division shall file it.



- (2) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on both the document and the accompanying copy. After filing a document, except as provided in Sections 16-10a-1510 and 16-10a-1608, the division shall deliver the accompanying copy, with the receipt for any filing fees, to the domestic or foreign corporation for which the filing is made, or its representative, at the address indicated on the filing, or at the address the division determines to be appropriate.
- (3) If the division refuses to file a document, it shall return the document to the person requesting the filing within 10 days after the document was delivered to the division, together with a written notice providing a brief explanation of the reason for the refusal.
- (4) The division's duty to file documents under this section is ministerial. Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:
  - (a) affect the validity or invalidity of the document in whole or part;
  - (b) relate to the correctness or incorrectness of information contained in the document; or
  - (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Amended by Chapter 364, 2008 General Session

**16-10a-126 Appeal from division's refusal to file document.**

- (1) If the division refuses to file a document delivered to it for filing, the domestic or foreign corporation for which the filing was requested, or its representative, within 30 days after the effective date of the notice of refusal given by the division pursuant to Subsection 16-10a-125(3), may appeal the refusal to the district court of the county where the corporation's principal office is or will be located, or if there is none in this state, the county where its registered office is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition a copy of the document and the division's notice of refusal.
- (2) The court may summarily order the division to file the document or take other action the court considers appropriate.
- (3) The court's final decision may be appealed as in any other civil proceedings.

Enacted by Chapter 277, 1992 General Session

**16-10a-127 Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the division, or an endorsement, seal, or stamp placed on the copy, which certificate, endorsement, seal, or stamp bears the signature of the director of the division, or a facsimile of the director's signature, and the seal of the division, is conclusive evidence that the original document has been filed with the division.

Enacted by Chapter 277, 1992 General Session

**16-10a-128 Certificates issued by the division.**

- (1) Anyone may apply to the division for a certificate of existence for a domestic corporation, a certificate of authorization for a foreign corporation, or a certificate that sets forth any facts of record in the office of the division.
- (2) A certificate of existence or authorization sets forth:

- (a) the domestic corporation's corporate name or the foreign corporation's corporate name registered in this state;
  - (b) that:
    - (i) the domestic corporation is duly incorporated under the law of this state and the date of its incorporation; or
    - (ii) the foreign corporation is authorized to transact business in this state;
  - (c) that all fees, taxes, and penalties owed to this state have been paid, if:
    - (i) payment is reflected in the records of the division; and
    - (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
  - (d) that its most recent annual report required by Section 16-10a-1607 has been filed by the division;
  - (e) that articles of dissolution have not been filed; and
  - (f) other facts of record in the office of the division that may be requested by the applicant.
- (3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Enacted by Chapter 277, 1992 General Session

**16-10a-129 Penalty for signing false documents.**

- (1) A person commits an offense if he signs a document knowing it to be false in any material respect, with intent that the document be delivered to the division for filing.
- (2) An offense under this section is a class A misdemeanor punishable by a fine not to exceed \$2,500.

Enacted by Chapter 277, 1992 General Session

## **Part 2 Incorporation**

**16-10a-201 Incorporators.**

One or more persons may act as incorporators of a corporation by delivering to the division for filing articles meeting the requirements of Section 16-10a-202. An incorporator who is a natural person shall be at least 18 years old.

Amended by Chapter 378, 2010 General Session

**16-10a-202 Articles of incorporation.**

- (1) The articles of incorporation shall set forth:
  - (a) the purpose or purposes for which the corporation is organized;
  - (b) a corporate name for the corporation that satisfies the requirements of Section 16-10a-401;
  - (c) the number of shares the corporation is authorized to issue;
  - (d) the information required by Section 16-10a-601 with respect to each class of shares the corporation is authorized to issue;
  - (e) the information required by Subsection 16-17-203(1); and
  - (f) the name and address of each incorporator.
- (2) The articles of incorporation may set forth:

- (a) the names and addresses of the individuals who are to serve as the initial directors;
- (b) provisions not inconsistent with law regarding:
  - (i) managing the business and regulating the affairs of the corporation;
  - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;
  - (iii) a par value for authorized shares or classes of shares; and
  - (iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and
- (c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws including elective provisions which, to be effective, shall be included in the articles of incorporation, as provided in this chapter.
- (3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this chapter, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.
- (4) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.
- (5) The articles of incorporation shall be signed by each incorporator and meet the filing requirements of Section 16-10a-120.
- (6)
  - (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in the articles of incorporation or the bylaws.
  - (b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

Amended by Chapter 43, 2010 General Session  
Amended by Chapter 378, 2010 General Session

#### **16-10a-203 Incorporation.**

- (1) A corporation is incorporated, and its corporate existence begins, when the articles of incorporation are filed by the division, unless a delayed effective date is specified pursuant to Subsection 16-10a-123(2), in which case the incorporation is effective, and the corporate existence begins, on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.
- (2) The filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-204 Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Enacted by Chapter 277, 1992 General Session

### **16-10a-205 Organization of the corporation.**

- (1) After incorporation:
  - (a) if initial directors are named in the articles of incorporation, the initial directors may hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or
  - (b) if initial directors are not named in the articles of incorporation, then until directors are elected, the incorporator or incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the corporation, including the election of directors and officers and the adoption and amendment of bylaws.
- (2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.
- (3) An organizational meeting may be held in or out of this state.

Enacted by Chapter 277, 1992 General Session

### **16-10a-206 Bylaws.**

- (1)
  - (a) The board of directors of a corporation may adopt initial bylaws for the corporation.
  - (b) If no directors have been elected the incorporators may adopt initial bylaws for the corporation.
  - (c) If neither the incorporators nor the board of directors have adopted initial bylaws, the shareholders may do so.
- (2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation, including management and regulation of the corporation in the event of an emergency.

Enacted by Chapter 277, 1992 General Session

## **Part 3 Purposes and Powers**

### **16-10a-301 Purposes.**

- (1) A corporation incorporated under this chapter and including in the corporation's articles of incorporation a statement that meets the requirements of Subsection 16-10a-202(3) may engage in any lawful business or activity except for express limitations set forth in the articles of incorporation.
- (2) A corporation engaging in a business or an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

Amended by Chapter 237, 2015 General Session

### **16-10a-302 General powers.**

Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its permitted and lawful purposes, activities, and affairs, including without limitation the power:

- (1) to sue and be sued, complain and defend in the corporation's corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing the corporate seal or in any other manner reproducing the corporate seal;
- (3) to make and amend bylaws, not inconsistent with the corporation's articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporation's property and assets;
- (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue the corporation's notes, bonds, and other obligations that may or may not be convertible into or include the option to purchase other securities of the corporation, and secure any of the corporation's obligations by mortgage or pledge of any of the corporation's property, assets, franchises, or income;
- (8) to lend money, invest and reinvest the corporation's funds, and receive and hold real and personal property as security for repayment;
- (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) to conduct the corporation's business and activities, locate offices, and exercise the powers granted by this chapter within or without this state;
- (11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of the corporation's current or former directors, officers, employees, and agents;
- (13) to operate, and to make donations, for the public welfare or for charitable, religious, scientific, or educational purposes;
- (14) to transact any lawful business that will aid governmental policy;
- (15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation; and
- (16) to establish rules governing the conduct of the business and affairs of the corporation in the event of an emergency.

Amended by Chapter 237, 2015 General Session

### **16-10a-303 Ultra vires.**

- (1) Except as provided in Subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
- (2) A corporation's power to act may be challenged:
  - (a) in a proceeding by a shareholder against the corporation to enjoin the act;
  - (b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
  - (c) in a proceeding by the attorney general under Section 16-10a-1430.
- (3) In a shareholder's proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Enacted by Chapter 277, 1992 General Session

## **Part 4**

### **Name**

#### **16-10a-401 Corporate name.**

- (1) The name of a corporation:
  - (a) except for the name of a depository institution as defined in Section 7-1-103, shall contain:
    - (i) the word:
      - (A) "corporation";
      - (B) "incorporated"; or
      - (C) "company";
    - (ii) the abbreviation:
      - (A) "corp.";
      - (B) "inc."; or
      - (C) "co."; or
    - (iii) words or abbreviations of like import to the words or abbreviations listed in Subsections (1)(a)(i) and (ii) in another language;
  - (b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by:
    - (i) Section 16-10a-301; and
    - (ii) the corporation's articles of incorporation;
  - (c) without the written consent of the United States Olympic Committee, may not contain the words:
    - (i) "Olympic";
    - (ii) "Olympiad"; or
    - (iii) "Citius Altius Fortius"; and
  - (d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:
    - (i) "university";
    - (ii) "college"; or
    - (iii) "institute" or "institution."

- (2) Except as authorized by Subsections (3) and (4), the name of a corporation shall be distinguishable, as defined in Subsection (5), upon the records of the division from:
- (a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;
  - (b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;
  - (c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;
  - (d) the name of any limited partnership formed or authorized to transact business in this state;
  - (e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and
  - (f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.
- (3)
- (a) A corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (2).
  - (b) The division shall approve the application filed under Subsection (3)(a) if:
    - (i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:
      - (A) consents to the filing, registration, or reservation in writing; and
      - (B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or
    - (ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.
- (4) A corporation may make a filing under the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if:
- (a) the other corporation is incorporated or authorized to transact business in this state; and
  - (b) the filing corporation:
    - (i) has merged with the other corporation; or
    - (ii) has been formed by reorganization of the other corporation.
- (5)
- (a) A name is distinguishable from other names, trademarks, and service marks on the records of the division if it:
    - (i) contains one or more different letters or numerals; or
    - (ii) has a different sequence of letters or numerals from the other names on the division's records.
  - (b) Differences which are not distinguishing are:
    - (i) the words or abbreviations of the words:
      - (A) "corporation";
      - (B) "company";
      - (C) "incorporated";
      - (D) "limited partnership";
      - (E) "L.P.";
      - (F) "limited";
      - (G) "limited liability company";
      - (H) "limited company";

- (I) "L.C."; or
- (J) "L.L.C.";
- (ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
- (iii) differences in punctuation and special characters;
- (iv) differences in capitalization;
- (v) differences between singular and plural forms of words for a corporation:
  - (A) incorporated in or authorized to do business in this state on or after May 4, 1998; or
  - (B) that changes its name on or after May 4, 1998;
- (vi) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:
  - (A) the sequence of letters or numbers is identical; and
  - (B) the corporation:
    - (I) is incorporated in or authorized to do business in this state on or after May 3, 1999; or
    - (II) changes its name on or after May 3, 1999; or
- (vii) differences in abbreviations, for a corporation:
  - (A) incorporated in or authorized to do business in this state on or after May 1, 2000; or
  - (B) that changes its name on or after May 1, 2000.
- (c) The director of the division has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.
- (6) A name that implies that the corporation is an agency of this state or of any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.
- (7)
  - (a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.
  - (b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

Amended by Chapter 353, 2011 General Session

**16-10a-402 Reserved name.**

- (1) Any person may apply for the reservation of a name by delivering to the division for filing an application setting forth the name and address of the applicant and the name proposed to be reserved. If the division finds that the name applied for would be available for use as a corporate name under Section 16-10a-401, the division shall reserve the name for the applicant for a 120-day period. Any person which has in effect a reservation of a name permitted by this Subsection may renew the reservation by delivering to the division for filing prior to expiration of the reservation a renewal application for reservation, which complies with the requirements of this Subsection (1). When filed, the renewal application for reservation renews the reservation for a period of 120 days from the date of filing.
- (2) The applicant for a reserved name may transfer the reservation to another person by delivering to the division a notice of the transfer signed by the applicant for which the name was reserved and specifying the reserved name, the name of the holder of the name, and the name and address of the transferee.
- (3) A name reservation does not authorize the applicant to use the name until:
  - (a) the name is registered as a trade name under Section 42-2-5;
  - (b) articles of incorporation which bear the name are filed with the division; or



- (c) an application for authority to transact business in this state under the name has been filed with the division pursuant to Part 15, Authority of Foreign Corporation to Transact Business.

Amended by Chapter 189, 2014 General Session

**16-10a-403 Corporate name -- Limited rights.**

The authorization granted by the division to file articles of incorporation under a corporate name or to reserve a name does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name.

Enacted by Chapter 277, 1992 General Session

## **Part 6**

### **Shares and Distributions**

**16-10a-601 Authorized shares.**

- (1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by this section and Section 16-10a-602.
- (2) The articles of incorporation shall authorize:
  - (a) one or more classes of shares that together have unlimited voting rights; and
  - (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one or more classes of shares and one or more series of shares within any class that:
  - (a) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;
  - (b) are redeemable or convertible as specified in the articles of incorporation:
    - (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
    - (ii) for money, indebtedness, securities, or other property; or
    - (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
  - (c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
  - (d) have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) The description of the designations, preferences, limitations, and relative rights of share classes or series of shares in Subsection (3) is not exhaustive.

Amended by Chapter 378, 2010 General Session

**16-10a-602 Terms of class or series determined by board of directors.**

- (1) If the articles of incorporation so provide, the board of directors, without shareholder action but subject to any limitations and restrictions stated in the articles of incorporation, may amend the corporation's articles of incorporation pursuant to the authority granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:
  - (a) designate in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in Section 16-10a-601, of any class of shares before the issuance of any shares of that class;
  - (b) create one or more series within a class of shares, fix the number of shares of each such series, and designate, in whole or part, the preferences, limitations, and relative rights of the series, within the limits set forth in Section 16-10a-601, all before the issuance of any shares of that series;
  - (c) alter or revoke the preferences, limitations, and relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares; or
  - (d) increase or decrease the number of shares constituting any series, the number of shares of which was originally fixed by the board of directors, either before or after the issuance of shares of the series, provided that the number may not be decreased below the number of shares of the series then outstanding, or increased above the total number of authorized shares of the applicable class of shares available for designation as a part of the series.
- (2) Each series of a class shall be given a distinguishing designation.
- (3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.
- (4) Before issuing any shares of a class or series created under this section, or having preferences, limitations, or relative rights designated by the board of directors as provided in this section, and before any amendment to articles of incorporation contemplated by Subsection (1) shall be effective, the corporation shall deliver to the division for filing, in accordance with the procedure set forth in Section 16-10a-1006, articles of amendment that set forth:
  - (a) the name of the corporation;
  - (b) the text of the amendment adopted by the board of directors pursuant to Subsection (1);
  - (c) the date the amendment was adopted by the board of directors;
  - (d) a statement that the amendment was duly adopted by the board of directors without shareholder action and that shareholder action was not required; and
  - (e) if the amendment alters or revokes the preferences, limitations, or relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares, a statement that none of the shares of any class or series of shares so affected has been issued.

Amended by Chapter 378, 2010 General Session

**16-10a-603 Issued and outstanding shares.**

- (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

- (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of Subsection (3) and to Section 16-10a-640.
- (3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Amended by Chapter 378, 2010 General Session

**16-10a-604 Fractional shares.**

- (1) A corporation may:
  - (a) issue fractions of a share or pay in money the value of fractions of a share;
  - (b) arrange for disposition of fractional shares by the shareholders; or
  - (c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.
- (2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required to be included on a share certificate by Subsections 16-10a-625(2) and (3) and Section 16-10a-627.
- (3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
- (4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
  - (a) that the scrip will become void if not exchanged for full shares before a specified date; and
  - (b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Amended by Chapter 378, 2010 General Session

**16-10a-620 Subscriptions for shares.**

- (1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree or the corporation consents to revocation of the subscription and provided the subscription is not considered revocable under the federal securities laws.
- (2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to Section 16-10a-621.
- (3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.
- (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
- (5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

- (6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 16-10a-621.

Amended by Chapter 378, 2010 General Session

**16-10a-621 Issuance of shares.**

- (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (2) The board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts or arrangements for services to be performed, or other securities of the corporation. The terms and conditions of any tangible or intangible property or benefit to be provided in the future to the corporation, including contracts or arrangements for services to be performed, shall be set forth in writing. However, the failure to set forth the terms and conditions in writing does not affect the validity of the issuance of any shares issued for any consideration, or their status as fully paid and nonassessable shares.
- (3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination regarding the adequacy of consideration for the issuance of shares is conclusive for the purpose of determining whether the shares are validly issued, fully paid, and nonassessable.
- (4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
- (5) The corporation may place in escrow shares issued in consideration for contracts or arrangements for future services or benefits or in consideration for a promissory note, or make other arrangements to restrict the transfer of the shares issued for any such consideration, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If specified future services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.
- (6) The board of directors may authorize a committee of the board of directors, or an officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of shares, within limits specifically prescribed by the board of directors.

Amended by Chapter 378, 2010 General Session

**16-10a-622 Liability of shareholders.**

- (1) A purchaser from a corporation of shares issued by the corporation is not liable to the corporation or its creditors with respect to the shares except to pay or provide the consideration for which the issuance of the shares was authorized under Section 16-10a-621 or specified in the subscription agreement under Section 16-10a-620.
- (2) Unless otherwise provided in the articles of incorporation, a shareholder or subscriber for shares of a corporation is not personally liable for the acts or debts of the corporation solely by reason of the ownership of the corporation's shares.
- (3)
  - (a) A shareholder of a corporation, when acting solely in the capacity of a shareholder, has no fiduciary duty or other similar duty to any other shareholder of the corporation, including not having a duty of care, loyalty, or utmost good faith.

- (b) This Subsection (3) applies to a corporation governed by this chapter, including a public corporation or a closely-held corporation.
- (c) This Subsection (3) does not affect any of the following:
  - (i) liability of a shareholder who receives an improper dividend or distribution, as set forth in Section 16-10a-842;
  - (ii) liability for an act before incorporation, as set forth in Section 16-10a-204;
  - (iii) liability of a director or officer of a corporation for breach of a fiduciary duty or other similar duty to shareholders solely in the capacity as a director or officer, regardless of whether the director or officer is a shareholder of the corporation; or
  - (iv) liability of a director or officer of a corporation for an act, breach, or failure for which liability is set forth in:
    - (A) Section 16-10a-840;
    - (B) Section 16-10a-841; or
    - (C) Section 16-10a-842.

Amended by Chapter 44, 2010 General Session

**16-10a-623 Share dividends.**

- (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or, to the extent and in the manner provided for in the articles of incorporation, to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.
- (2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
  - (a) the articles of incorporation so authorize;
  - (b) a majority of the votes entitled to be cast by the outstanding shares of the class or series to be issued approve the issue; or
  - (c) there are no outstanding shares of the class or series to be issued.
- (3) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a share dividend. If no future date is so fixed, the record date is the date the board of directors authorizes the share dividend.

Enacted by Chapter 277, 1992 General Session

**16-10a-624 Share options and other rights.**

- (1) Subject to any provisions in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of any shares or other securities of the corporation, rights or options for the purchase of shares or assets of the corporation. The board of directors shall determine the terms upon which the rights or options are issued, their form and content, and the consideration for which the shares are to be issued.
- (2) The terms and conditions of the options or rights may include restrictions or conditions that:
  - (a) preclude or limit the exercise, transfer, or receipt of the options or rights by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation or any transferee of that person; or
  - (b) invalidate or void the options or rights.
- (3) This section applies to all options and rights notwithstanding the date of grant.

Enacted by Chapter 277, 1992 General Session

**16-10a-625 Form and content of certificates.**

- (1) Shares may but need not be represented by certificates. Unless this chapter or another applicable statute expressly provides otherwise, the rights and obligations of shareholders are not affected by whether or not their shares are represented by certificates.
- (2) Each share certificate shall state on its face:
  - (a) the name of the issuing corporation and that it is organized under the laws of this state;
  - (b) the name of the person to whom the certificate is issued; and
  - (c) the number and class of shares and the designation of the series, if any, the certificate represents.
- (3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and relative rights determined for each series, and the authority of the board of directors to determine variations for any existing or future class or series, shall be summarized on the front or back of each share certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
- (4) Each share certificate:
  - (a) shall be signed by two officers designated in the bylaws or by the board of directors;
  - (b) may bear the corporate seal or its facsimile; and
  - (c) may contain any other information as the corporation considers necessary or appropriate.
- (5) The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation.
- (6) In case any officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, the certificate may be issued by the corporation with the same effect as if the person were an officer at the date of its issue.

Amended by Chapter 378, 2010 General Session

**16-10a-626 Shares without certificates.**

- (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.
- (2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by Subsections 16-10a-625(2) and (3), and, if applicable, Section 16-10a-627.

Enacted by Chapter 277, 1992 General Session

**16-10a-627 Restrictions on transfer or registration of shares or other securities.**

- (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between one or more shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction or otherwise consented to the restriction.

- (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate, or if the restriction is contained in the information statement required by Subsection 16-10a-626(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares is authorized:
  - (a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;
  - (b) to preserve entitlements, benefits, or exemptions under federal, state, or local laws; and
  - (c) for any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may:
  - (a) obligate the shareholder first to offer to the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;
  - (b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;
  - (c) require, as a condition to a transfer or registration, that any one or more persons, including the corporation or any of its shareholders, approve the transfer or registration, if the requirement is not manifestly unreasonable; or
  - (d) prohibit the transfer or the registration of a transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (5) The description of the restrictions on the transfer or registration of transfer of shares in Subsection (4) is not exhaustive.
- (6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-628 Expense of issue.**

A corporation may pay the expenses of selling or underwriting its shares, and of incorporating, organizing, or reorganizing the corporation from the consideration received for shares.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-630 Shareholders' preemptive rights.**

- (1) Subject to the provisions of Subsection 16-10a-1704(3), the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.
- (2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:
  - (a) Upon the decision of the board of directors to issue shares, the shareholders of the corporation have a preemptive right, subject to any uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right, to acquire a number of the shares proposed to be issued in an amount proportional to their percentage ownership of the corporation's outstanding shares.
  - (b) A shareholder may waive a preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.
  - (c) There is no preemptive right with respect to:

- (i) shares issued as compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
- (ii) shares issued to satisfy conversion or option rights created to provide compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
- (iii) shares issued within six months from the effective date of incorporation; or
- (iv) shares sold otherwise than for cash.
- (d) Holders of shares of any class without general voting rights but with preferential rights to distributions have no preemptive rights with respect to shares of any other class.
- (e) Holders of shares of any class with general voting rights but without preferential rights to distributions have no preemptive rights with respect to shares of any class without general voting rights but with preferential rights to distributions unless the shares without general voting rights but with preferential rights are convertible into or carry a right to subscribe for or acquire shares with general voting rights or without preferential rights.
- (f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders pursuant to the preemptive rights, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of the one year period is subject to the shareholders' preemptive rights.
- (3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Enacted by Chapter 277, 1992 General Session

**16-10a-631 Corporation's acquisition of its own shares.**

- (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.
- (2) If the articles of incorporation prohibit the reissuance of acquired shares:
  - (a) the number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment of the articles of incorporation; and
  - (b) as provided in Section 16-10a-1002, the board of directors may adopt an amendment to the articles of incorporation under Subsection (2)(a) without shareholder action in order to reduce the number of authorized shares by an amount equal to the number of shares acquired by the corporation.
- (3) A corporation amending its articles of incorporation pursuant to Subsection (2) shall deliver to the division for filing articles of amendment setting forth:
  - (a) the name of the corporation;
  - (b) the reduction in the number of authorized shares, itemized by class and series;
  - (c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and
  - (d) a statement that the amendment was adopted by the board of directors without shareholder action and that shareholder action was not required.

Enacted by Chapter 277, 1992 General Session

**16-10a-640 Distributions to shareholders.**



- (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to any restriction in the articles of incorporation and the limitations in Subsection (3).
- (2) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares. If a record date is necessary but no future date is so fixed, the record date is the date the board of directors authorizes the distribution.
- (3) No distribution may be made if, after giving it effect:
  - (a) the corporation would not be able to pay its debts as they become due in the usual course of business; or
  - (b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.
- (4) The board of directors may base a determination that a distribution is not prohibited under Subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, including consolidated financial statements, or on a fair valuation or other method that is reasonable in the circumstances.
- (5) Except as provided in Subsection (7), the effect of a distribution under Subsection (3) is measured:
  - (a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:
    - (i) the date money or other property is transferred or debt is incurred by the corporation; or
    - (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
  - (b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
  - (c) in all other cases, as of:
    - (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or
    - (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.
- (6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section, if the indebtedness is unsecured, is on a parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.
- (7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under Subsection (3) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

Enacted by Chapter 277, 1992 General Session

**16-10a-641 Unclaimed distributions.**

If a corporation has mailed three successive distributions to a shareholder addressed to the shareholder's address shown on the corporation's current record of shareholders and the

distributions have been returned as undeliverable, no further attempt to deliver distributions to the shareholder need be made until another address for the shareholder is made known to the corporation, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the shareholder at the other address.

Enacted by Chapter 277, 1992 General Session

## **Part 7 Shareholders**

### **16-10a-701 Annual meeting.**

- (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
- (2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action or work a forfeiture or dissolution of the corporation.

Enacted by Chapter 277, 1992 General Session

### **16-10a-702 Special meeting.**

- (1) A corporation shall hold a special meeting of shareholders:
  - (a) on call of its board of directors or the person or persons authorized by the bylaws to call a special meeting; or
  - (b) if the holders of shares representing at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting, stating the purpose or purposes for which it is to be held.
- (2) If not otherwise fixed under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to demand a special meeting pursuant to Subsection (1)(b) is the earliest date of any of the demands pursuant to which the meeting is called or the date that is 60 days prior to the date the first of the written demands pursuant to which the meeting is called is received by the corporation, whichever is later.
- (3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
- (4) Only business within the purpose or purposes described in the meeting notice required by Subsection 16-10a-705(3) may be conducted at a special shareholders' meeting, unless notice of the meeting is waived by all shareholders pursuant to Section 16-10a-706.

Enacted by Chapter 277, 1992 General Session

### **16-10a-703 Court-ordered meeting.**

- (1) The district court of the county in this state where a corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County may summarily order a meeting of shareholders to be held:
  - (a) on application of any shareholder of the corporation entitled to participate in an annual meeting or any director of the corporation if an annual meeting was not held within 15 months after its last annual meeting, or if there has been no annual meeting, the date of incorporation; or
  - (b) on application of any person who participated in a call of or demand for a special meeting effective under Subsection 16-10a-702(1) if:
    - (i) notice of the special meeting was not given within 60 days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was delivered to the corporation pursuant to Subsection 16-10a-702(1)(b), as the case may be; or
    - (ii) the special meeting was not held in accordance with the notice.
- (2) The court may fix the time and place of the meeting, state whether or not it is an annual or special meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the purpose or purposes of holding the meeting.

Amended by Chapter 364, 2008 General Session

**16-10a-704 Action without meeting.**

- (1)
  - (a) Unless otherwise provided in the articles of incorporation, and subject to the limitations of Subsection 16-10a-1704(4), any action that may be taken at an annual or special meeting of shareholders may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.
  - (b) A shareholder shall deliver written consent under this section to the corporation by delivering the written consent to:
    - (i) the corporation's principal place of business; or
    - (ii) an officer or agent of the corporation having custody of the book in which a proceeding of a meeting of shareholders is recorded.
  - (c) A written consent under this section shall bear the date of signature of each shareholder who signs the consent.
  - (d)
    - (i) Notwithstanding Subsection (1)(c), and unless otherwise provided by the bylaws, a shareholder may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.
    - (ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:
      - (A) that the electronic transmission is transmitted by the shareholder, proxyholder, or other person authorized to act for the shareholder or proxyholder; and

- (B) the date on which the electronic transmission is transmitted.
  - (iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.
  - (e) A consent signed pursuant to this section has the effect of a vote taken at a meeting and may be described as such in a document.
- (2)
- (a) Except as provided in Subsection (3), unless the written consents of all shareholders entitled to vote are obtained, written notice of shareholder approval of an action without a meeting shall be given at least 10 days before the consummation of the transaction, action, or event authorized by the shareholder action to:
    - (i) those shareholders entitled to vote who have not consented in writing; and
    - (ii) those shareholders not entitled to vote and to whom this chapter requires that notice of the proposed action be given.
  - (b) Notice under this Subsection (2) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.
- (3)
- (a) A transaction, action, or event authorized by shareholder action under this section may take effect in accordance with Subsection (5) notwithstanding that the written consents of all shareholders entitled to vote are not obtained if the articles of incorporation or bylaws of the corporation provide for notice under this Subsection (3).
  - (b) A corporation may provide in its articles of incorporation or bylaws that if the written consents of all shareholders entitled to vote are not obtained, the corporation shall give written notice of shareholder approval of an action without a meeting:
    - (i) not more than 10 days after the later of the day on which:
      - (A) the written consents sufficient to take the action are delivered to the corporation; or
      - (B) the tabulation of the written consents is completed in accordance with Subsection (1); and
    - (ii) to a shareholder who:
      - (A) would be entitled to notice of a meeting at which the action could be taken;
      - (B) would be entitled to vote if the action were taken at a meeting; and
      - (C) did not consent in writing to the action.
  - (c) Notice under this Subsection (3) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.
  - (d) The notice requirement in this Subsection (3) does not delay the effectiveness of an action taken by written consent in accordance with Subsection (5). Failure to comply with the notice requirement under this Subsection (3) by itself does not invalidate an action taken by written consent, except this Subsection (3)(d) does not limit judicial power to fashion an appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the time period required under Subsection (3)(b).
- (4) The following may revoke a written consent under this section by a signed writing describing the action and stating that a shareholder's prior consent is revoked, if the writing is received by the corporation before the effectiveness of the action:
- (a) the shareholder that gave the written consent;
  - (b) the proxyholder for the shareholder described in Subsection (4)(a);
  - (c) a transferee of the shares of the shareholder described in Subsection (4)(a);
  - (d) a personal representative of the shareholder described in Subsection (4)(a); or
  - (e) a proxyholder for a person described in this Subsection (4).

- (5)
  - (a) An action taken pursuant to this section is not effective unless all written consents on which the corporation relies for taking the action pursuant to Subsection (1) are:
    - (i) received by the corporation by no later than 60 days after the date the earliest written consent is delivered to the corporation as provided in Subsection (1); and
    - (ii) not revoked pursuant to Subsection (4).
  - (b)
    - (i) Unless otherwise provided by this Subsection (5) and subject to Subsection (2), an action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation.
    - (ii) If all of the written consents necessary to effect an action specify a later date as the effective date of the action, the later date is the effective date of the action.
    - (iii) If the corporation receives written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to an action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action.
- (6) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.
- (7) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) or (3) is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).
- (8) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

Amended by Chapter 424, 2011 General Session

**16-10a-705 Notice of meeting.**

- (1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.
- (2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
- (3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.
- (4)
  - (a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment.
  - (b) If the adjournment is for more than 30 days, or if after the adjournment a new record date for the adjourned meeting is or shall be fixed under Section 16-10a-707, notice of the adjourned meeting shall be given pursuant to the requirements of this section to shareholders of record who are entitled to vote at the meeting.
- (5)

- (a) Notwithstanding a requirement that notice be given under any provision of this chapter, the articles of incorporation, or bylaws of any corporation, notice is not required to be given to any shareholder to whom:
  - (i) a notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting during the period between the two consecutive annual meetings, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable; or
  - (ii) at least two payments, if sent by first class mail, of dividends or interest on securities during a 12 month period, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable.
- (b) Any action taken at a meeting held without notice to a shareholder to whom notice is excused under Subsection (5) has the same force and effect as if notice had been duly given. If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a written notice setting forth the shareholder's current address, or if another address for the shareholder is otherwise made known to the corporation, the requirement that notice be given to the shareholder is reinstated. In the event that the action taken by the corporation requires the filing of a certificate under any provision of this chapter, the certificate need not state that notice was not given to shareholders to whom notice was not required pursuant to this Subsection (5).

Amended by Chapter 424, 2011 General Session

**16-10a-706 Waiver of notice.**

- (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (2) A shareholder's attendance at a meeting:
  - (a) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and
  - (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Amended by Chapter 378, 2010 General Session

**16-10a-707 Record date.**

- (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to be given notice of a shareholders' meeting, to determine shareholders entitled to take action without a meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for the manner of fixing a record date, the board of directors of the corporation may fix a future date as the record date.

- (2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.
- (3) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.
- (4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.
- (5) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Amended by Chapter 378, 2010 General Session

**16-10a-708 Meetings by telecommunication.**

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special meeting of shareholders by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

Enacted by Chapter 277, 1992 General Session

**16-10a-720 Shareholders' list for meeting.**

- (1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares. The list shall be alphabetical within each class or series and shall show the address of, and the number of shares held by, each shareholder.
- (2) The shareholders' list shall be available for inspection by any shareholder, beginning on the earlier of 10 days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting and any meeting adjournments, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to the corporation and, subject to the requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during the period it is available for inspection.
- (3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment, for any purposes germane to the meeting.
- (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by Subsection (2), the district court of the county where a corporation's principal office is located, or, if it has none in this state, the district court for Salt Lake County, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and

may postpone the meeting for which the list was prepared until the inspection or copying is complete.

- (5) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), unless the corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the shareholders' list:
  - (a) the court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order;
  - (b) the court may order the corporation to pay the shareholder for any damages incurred; and
  - (c) the court may grant the shareholder any other remedy afforded by law.
- (6) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), the court may impose reasonable restrictions on the use or distribution of the list by the shareholder.
- (7) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Amended by Chapter 378, 2010 General Session

**16-10a-721 Voting entitlement of shares.**

- (1) Except as otherwise provided in Subsections (2) and (4), in Section 61-6-10, or in the articles of incorporation, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.
- (2) Except as otherwise ordered by a court of competent jurisdiction upon a finding that the purpose of this subsection would not be violated in the circumstances presented to the court, the shares of a corporation are not entitled to be voted or to be counted in determining the total number of outstanding shares eligible to be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.
- (3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- (4) Redeemable shares are not entitled to be voted after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Enacted by Chapter 277, 1992 General Session

**16-10a-722 Proxies.**

- (1) A shareholder may vote his shares in person or by proxy.
- (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.
- (3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent



of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

- (4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:
  - (a) a pledgee;
  - (b) a person who purchased or agreed to purchase the shares;
  - (c) a creditor of the corporation who extended its credit under terms requiring the appointment;
  - (d) an employee of the corporation whose employment contract requires the appointment; or
  - (e) a party to a voting agreement created under Section 16-10a-731.
- (5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
- (6) An appointment made irrevocable under Subsection (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:
  - (a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment; or
  - (b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
- (7) The corporation is not required to recognize an appointment made irrevocable under Subsection (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision does not affect any claim the other person may have against the shareholder with respect to the revocation.
- (8) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.
- (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Amended by Chapter 378, 2010 General Session

#### **16-10a-723 Shares held by nominees.**

- (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.
- (2) The procedure described in Subsection (1) may set forth:
  - (a) the types of nominees to which it applies;

- (b) the rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;
- (c) the manner in which the procedure may be used by the nominee;
- (d) the information that shall be provided by the nominee when the procedure is used;
- (e) the period for which the nominee's use of the procedure is effective; and
- (f) other aspects of the rights and duties created.

Amended by Chapter 378, 2010 General Session

**16-10a-724 Corporation's acceptance of votes.**

- (1) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder.
- (2) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder if:
  - (a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
  - (b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
  - (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
  - (d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
  - (e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all cotenants or fiduciaries; or
  - (f) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this section.
- (3) If shares are registered in the names of two or more persons, whether fiduciaries, members of a partnership, cotenants, husband and wife as community property, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons, including proxyholders, have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation or other officer or agent entitled to tabulate votes is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:
  - (a) if only one votes, the act binds all;
  - (b) if more than one vote, the act of the majority so voting binds all;

- (c) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately;
- (d) if the instrument so filed or the registration of the shares shows that any tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.
- (4) The corporation is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.
- (5) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.
- (6) Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

Enacted by Chapter 277, 1992 General Session

**16-10a-725 Quorum and voting requirements for voting groups.**

- (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.
- (2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or shall be set for that adjourned meeting.
- (3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.
- (4) The election of directors is governed by Section 16-10a-728.

Amended by Chapter 378, 2010 General Session

**16-10a-726 Action by single and multiple voting groups.**

- (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 16-10a-725.
- (2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 16-10a-725. One voting group may vote on a matter even though another voting group entitled to vote on the matter has not voted.

Enacted by Chapter 277, 1992 General Session

**16-10a-727 Greater quorum or voting requirements.**

- (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.
- (2) An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

Amended by Chapter 378, 2010 General Session

**16-10a-728 Voting for directors -- Cumulative voting.**

- (1) At each election of directors, unless otherwise provided in the articles of incorporation or this chapter, every shareholder entitled to vote at the election has the right to cast, in person or by proxy, all of the votes to which the shareholder's shares are entitled for as many persons as there are directors to be elected and for whose election the shareholder has the right to vote.
- (2) Unless otherwise provided in the articles of incorporation or this chapter, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election, at a meeting of shareholders at which a quorum is present.
- (3) Shareholders do not have a right to cumulate their votes for the election of directors unless the articles of incorporation so provide.
- (4) A statement included in the articles of incorporation to the effect that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.
- (5) Shares entitled to vote cumulatively may be voted cumulatively at each election of directors unless the articles of incorporation provide alternative procedures for the exercise of the cumulative voting rights.

Enacted by Chapter 277, 1992 General Session

**16-10a-730 Voting trusts.**

- (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, and transferring to the trustee the shares with respect to which the trustee is to act. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and promptly cause the corporation to receive copies of the list and agreement. Thereafter the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.
- (2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for the period provided in the agreement, but not more than 10 years after its effective date unless extended under Subsection (3).
- (3) All or some of the parties to a voting trust may extend the voting trust for additional terms of not more than 10 years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than 10 years from the date the first shareholder signs the extension agreement. The trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Amended by Chapter 378, 2010 General Session

**16-10a-731 Voting agreements.**

- (1) Two or more persons, one or more of whom are shareholders, may provide for the manner in which the shareholders will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of Section 16-10a-730.
- (2) A voting agreement created under this section may be specifically enforceable.

Enacted by Chapter 277, 1992 General Session

**16-10a-732 Shareholder agreements.**

- (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:
  - (a) eliminates the board of directors or restricts the discretion or powers of the board of directors;
  - (b) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in Section 16-10a-640;
  - (c) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
  - (d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
  - (e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;
  - (f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
  - (g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
  - (h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.
- (2) An agreement authorized by this section shall be:
  - (a) set forth:
    - (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or
    - (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
  - (b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and
  - (c) valid for 10 years, unless the agreement provides otherwise.
- (3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by Section 16-10a-626(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates

and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

- (4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.
- (5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by laws on directors to the extent that the discretion or powers of the directors are limited by the agreement.
- (6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.
- (7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Amended by Chapter 378, 2010 General Session

#### **16-10a-740 Procedure in derivative proceedings.**

- (1) As used in this section:
  - (a) "derivative proceeding" means a civil suit in the right of:
    - (i) a domestic corporation; or
    - (ii) to the extent provided in Subsection (7), a foreign corporation; and
  - (b) "shareholder" includes a beneficial owner whose shares are held:
    - (i) in a voting trust; or
    - (ii) by a nominee on the beneficial owner's behalf.
- (2) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:
  - (a)
    - (i) was a shareholder of the corporation at the time of the act or omission complained of; or
    - (ii) became a shareholder through transfer by operation of law from one who was a shareholder at the time of the act or omission complained of; and
  - (b) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.
- (3)

- (a) A shareholder may not commence a derivative proceeding until:
  - (i) a written demand has been made upon the corporation to take suitable action; and
  - (ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is made unless:
    - (A) the shareholder is notified before the 90 days have expired that the demand has been rejected by the corporation; or
    - (B) irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.
- (b) A complaint in a derivative proceeding shall be:
  - (i) verified; and
  - (ii) allege with particularity the demand made to obtain action by the board of directors.
- (c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil Procedure, Rule 23A.
- (d) The court shall stay any derivative proceeding until the inquiry is completed and for such additional period as the court considers appropriate if:
  - (i) the corporation commences an inquiry into the allegations made in the demand or complaint; and
  - (ii) a person or group described in Subsection (4) is conducting an active review of the allegations in good faith.
- (e) If a corporation proposes to dismiss a derivative proceeding pursuant to Subsection (4)(a), discovery by a shareholder following the filing of the derivative proceeding in accordance with this section:
  - (i) shall be limited to facts relating to:
    - (A) whether the person or group described in Subsection (4)(b) or (4)(f) is independent and disinterested;
    - (B) the good faith of the inquiry and review by the person or group described in Subsection (4)(b) or (4)(f); and
    - (C) the reasonableness of the procedures followed by the person or group described in Subsection (4)(b) or (4)(f) in conducting its review; and
  - (ii) may not extend to any facts or substantive matters with respect to the act, omission, or other matter that is the subject matter of the derivative proceeding.
- (4)
  - (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if a person or group specified in Subsections (4)(b) or (4)(f) determines in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.
  - (b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in Subsection (4)(a) shall be made by:
    - (i) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or
    - (ii) a majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors appointing the committee constituted a quorum.
  - (c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:
    - (i) the nomination or election of the director by persons:
      - (A) who are defendants in the derivative proceeding; or
      - (B) against whom action is demanded;

- (ii) the naming of the director as:
      - (A) a defendant in the derivative proceeding; or
      - (B) a person against whom action is demanded; or
    - (iii) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.
  - (d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:
    - (i) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or
    - (ii) that the requirements of Subsection (4)(a) have not been met.
  - (e)
    - (i) If a majority of the board of directors does not consist of independent directors at the time the determination is made rejecting a demand by a shareholder, the corporation has the burden of proving that the requirements of Subsection (4)(a) have been met.
    - (ii) If a majority of the board of directors consists of independent directors at the time the determination is made rejecting a demand by a shareholder, the plaintiff has the burden of proving that the requirements of Subsection (4)(a) have not been met.
  - (f)
    - (i) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.
    - (ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden of proving that the requirements of Subsection (4)(a) have not been met.
  - (g) A person may appeal from an interlocutory order of a court that grants or denies a motion to dismiss brought pursuant to Subsection (4)(a).
- (5)
- (a) A derivative proceeding may not be discontinued or settled without the court's approval.
  - (b) If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.
- (6) On termination of the derivative proceeding the court may order:
- (a) the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation;
  - (b) the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:
    - (i) without reasonable cause; or
    - (ii) for an improper purpose; or
  - (c) a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was:
    - (i)
      - (A) not well grounded in fact, after reasonable inquiry; or
      - (B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
    - (ii) interposed for an improper purpose, such as to:
      - (A) harass;



- (B) cause unnecessary delay; or
- (C) cause needless increase in the cost of litigation.

- (7)
- (a) In any derivative proceeding in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for Subsections (3)(c), (3)(d), (5), and (6), which are procedural and not matters relating to the internal affairs of the foreign corporation.
  - (b) In the case of matters relating to a foreign corporation under Subsection (3)(c):
    - (i) references to a person or group described in Subsection (4) are considered to refer to a person or group entitled under the laws of the jurisdiction of incorporation of the foreign corporation to review and dispose of a derivative proceeding; and
    - (ii) the standard of review of a decision by the person or group to dismiss the derivative proceeding is to be governed by the laws of the jurisdiction of incorporation of the foreign corporation.

Amended by Chapter 369, 2012 General Session

## **Part 8**

### **Directors and Officers**

#### **16-10a-801 Requirement for and duties of board of directors.**

- (1) Except as provided in Section 16-10a-732, each corporation shall have a board of directors.
- (2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 16-10a-732.

Amended by Chapter 378, 2010 General Session

#### **16-10a-802 Qualifications of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors, except a director shall be a natural person. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Amended by Chapter 41, 1996 General Session

#### **16-10a-803 Number and election of directors.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a corporation's board of directors shall consist of a minimum of three individuals.
  - (b)
    - (i) Before any shares are issued, a corporation's board of directors may consist of one or more individuals.
    - (ii) After shares are issued and for as long as a corporation has fewer than three shareholders entitled to vote for the election of directors, its board of directors may consist of a number of individuals equal to or greater than the number of those shareholders.

- (c) The number of directors shall be specified in or fixed in accordance with the bylaws. Unless otherwise provided in the articles of incorporation, the number of initial directors stated in the articles of incorporation as originally filed with the division, if initial directors are so named in the articles of incorporation, shall be superseded by a provision in the bylaws specifying the number of authorized directors.
- (d) The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease may have the effect of shortening the term of any incumbent director.
- (e) In the absence of a provision in the bylaws or articles of incorporation fixing the number of individuals composing a board of directors, the number shall be the greater of:
  - (i) the number of directors then in office; or
  - (ii) the minimum number of directors permitted by this section.
- (2) The bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the shareholders or the board of directors.
- (3) Directors are elected at each annual meeting of the shareholders except as provided in Section 16-10a-806.

Amended by Chapter 378, 2010 General Session

**16-10a-804 Election of directors by certain classes of shareholders.**

If the articles of incorporation authorize dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number or portion of directors by the holders of one or more authorized classes or series of shares. A class or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Enacted by Chapter 277, 1992 General Session

**16-10a-805 Terms of directors generally.**

- (1) Except as provided in Section 16-10a-806, the terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.
- (2) The terms of all other directors expire at the next annual shareholders' meeting following their election:
  - (a) except as provided in:
    - (i) Section 16-10a-806; or
    - (ii) Section 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023 applies; or
  - (b) unless a shorter term is specified in the articles of incorporation in the event a director nominee fails to receive a specified vote for election.
- (3) A decrease in the number of directors does not shorten an incumbent director's term.
- (4)
  - (a) A director elected to fill a vacancy created other than by an increase in the number of directors shall be elected for the unexpired term of the director's predecessor in office, or for any lesser period as may be prescribed by the board of directors.
  - (b) If a director is elected to fill a vacancy created by reason of an increase in the number of directors, then the term of the director so elected expires at the next shareholders' meeting

at which directors are elected, unless the vacancy is filled by a vote of the shareholders, in which case the term shall expire on the later of:

- (i) the next meeting of shareholders at which directors are elected; or
  - (ii) the term designated for the director at the time of the creation of the position being filled.
- (5) Except as otherwise provided in the articles of incorporation, or Section 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023 applies, despite the expiration of a director's term, the director continues to serve until the election and qualification of a successor or there is a decrease in the number of directors.
- (6) A director whose term has ended may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

Amended by Chapter 85, 2007 General Session

#### **16-10a-806 Staggered terms for directors.**

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing 1/2 or 1/3 of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of directors in the second group expire at the second annual shareholders' meeting after their election, and the terms of directors in the third group, if any, expire at the third annual shareholders' meeting after their election. Upon the expiration of the initial staggered terms directors shall be elected for terms of two years or three years, as the case may be, to succeed those whose terms expire.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-807 Resignation of directors.**

- (1) A director may resign at any time by giving a written notice of resignation to the board of directors, the board's chair, or the corporation's secretary.
- (2)
- (a) A resignation of a director is effective when the notice is received by the corporation unless the notice specifies a later effective date or an effective date determined by the happening of an event.
  - (b) A notice of resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.
- (3) A director who resigns may deliver to the division for filing a statement of the director's resignation pursuant to Section 16-10a-1608.

Amended by Chapter 85, 2007 General Session

#### **16-10a-808 Removal of directors by shareholders.**

- (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.
- (3) If cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not in effect, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast against removal.

- (4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.
- (5) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

Amended by Chapter 378, 2010 General Session

**16-10a-809 Removal of directors by judicial proceeding.**

- (1) The district court of the county in this state where a corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County may remove a director in a proceeding commenced either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:
  - (a) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; and
  - (b) removal is in the best interest of the corporation.
- (2) The court that removes a director may bar the director from reelection for a period prescribed by the court.
- (3) If shareholders commence a proceeding under Subsection (1), they shall make the corporation a party defendant.
- (4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

Amended by Chapter 364, 2008 General Session

**16-10a-810 Vacancy on board.**

- (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:
  - (a) the shareholders may fill the vacancy;
  - (b) the board of directors may fill the vacancy; or
  - (c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.
- (2) Unless otherwise provided in the articles of incorporation, if the vacant office was held or is to be held by a director elected by a voting group of shareholders:
  - (a) if one or more of the other directors elected by the same voting group are serving, only they are entitled to vote to fill the vacancy if it is filled by the directors; and
  - (b) only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.
- (3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Section 16-10a-807 or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Amended by Chapter 184, 1993 General Session

**16-10a-811 Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Enacted by Chapter 277, 1992 General Session

**16-10a-820 Meetings.**

- (1) The board of directors may hold regular or special meetings in or out of this state.
- (2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

Enacted by Chapter 277, 1992 General Session

**16-10a-821 Action without meeting.**

- (1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to the action in writing.
- (2)
  - (a) Action is taken under this section at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive the revocation.
  - (b)
    - (i) Unless otherwise provided by the bylaws, a director may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.
    - (ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:
      - (A) that the electronic transmission is transmitted by the director; and
      - (B) the date on which the electronic transmission is transmitted.
    - (iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.
- (3) Action under this section is effective at the time it is taken under Subsection (2), unless the board of directors establishes a different effective date.
- (4) Action taken under this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

Amended by Chapter 227, 2011 General Session

**16-10a-822 Notice of meeting.**

- (1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purposes of the meeting.
- (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws, or this chapter.

Amended by Chapter 378, 2010 General Session

**16-10a-823 Waiver of notice.**

- (1) A director may waive any notice of a meeting before or after the date and time of the meeting stated in the notice. Except as provided by Subsection (2), the waiver shall be in writing and signed by the director entitled to the notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.
- (2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

Amended by Chapter 378, 2010 General Session

**16-10a-824 Quorum and voting.**

- (1) Unless the articles of incorporation or bylaws require a greater number, or, as permitted in Subsection (2), a lower number, a quorum of a board of directors consists of:
  - (a) a majority of the fixed number of directors if the corporation has a fixed board size; or
  - (b) a majority of the number of directors prescribed, or if no number is prescribed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to Subsection 16-10a-803(2).
- (2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Subsection (1).
- (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation, bylaws, or this chapter require the vote of a greater number of directors.
- (4) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to the action taken at the meeting unless:
  - (a) the director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;
  - (b) the director contemporaneously requests his dissent or abstention as to any specific action to be entered into the minutes of the meeting; or
  - (c) the director causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the corporation promptly after adjournment of the meeting.
- (5) The right of dissent or abstention as to a specific action pursuant to Subsection (4) is not available to a director who votes in favor of the action taken.

Amended by Chapter 184, 1993 General Session

**16-10a-825 Committees.**

- (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

- (2) The creation of a committee and appointment of members to it shall be approved by the greater of:
  - (a) a majority of all the directors in office when the action is taken; or
  - (b) the number of directors required by the articles of incorporation or bylaws to take action under Section 16-10a-824.
- (3) Sections 16-10a-820 through 16-10a-824, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.
- (4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 16-10a-801.
- (5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-10a-840.

Amended by Chapter 378, 2010 General Session

**16-10a-830 Required officers.**

- (1) A corporation shall have the officers designated in its bylaws or by the board of directors in a manner not inconsistent with the bylaws. Any officer shall be a natural person.
- (2) Officers may be appointed by the board of directors or in any other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (3) The bylaws or the board of directors shall delegate to one of the officers responsibility for the preparation and maintenance of minutes of the directors' and shareholders' meetings and other records and information required to be kept by the corporation under Section 16-10a-1601 and for authenticating records of the corporation.
- (4) The same individual may simultaneously hold more than one office in a corporation.

Amended by Chapter 41, 1996 General Session

**16-10a-831 Duties of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent not inconsistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers.

Enacted by Chapter 277, 1992 General Session

**16-10a-832 Resignation and removal of officers.**

- (1) An officer may resign at any time by giving written notice of the resignation to the corporation.
- (2) A resignation of an officer is effective when the notice is received by the corporation, unless the notice specifies a later effective date.
- (3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date, or the board of directors may remove the officer at any time prior to the effective date and may fill the resulting vacancy.
- (4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provision for the removal of officers by other officers or by the shareholders.

- (5) An officer who resigns or is removed or whose appointment has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

Enacted by Chapter 277, 1992 General Session

**16-10a-833 Contract rights with respect to officers.**

- (1) The appointment of an officer does not itself create contract rights.
- (2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Enacted by Chapter 277, 1992 General Session

**16-10a-840 General standards of conduct for directors and officers.**

- (1) Each director shall discharge his duties as a director, including duties as a member of a committee, and each officer with discretionary authority shall discharge his duties under that authority:
- (a) in good faith;
  - (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (c) in a manner the director or officer reasonably believes to be in the best interests of the corporation.
- (2) In discharging his duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (a) one or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
  - (b) legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or
  - (c) in the case of a director, a committee of the board of directors of which he is not a member, if the director reasonably believes the committee merits confidence.
- (3) A director or officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (2) unwarranted.
- (4) A director or officer is not liable to the corporation, its shareholders, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:
- (a) the director or officer has breached or failed to perform the duties of the office in compliance with this section; and
  - (b) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the corporation or the shareholders.

Amended by Chapter 266, 1993 General Session

**16-10a-841 Limitation of liability of directors.**

- (1) Without limiting the generality of Subsection 16-10a-840(4), if so provided in the articles of incorporation or in the bylaws or a resolution to the extent permitted in Subsection (3), a corporation may eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any action taken or any failure to take any action as a director, except liability for:



- (a) the amount of a financial benefit received by a director to which he is not entitled;
  - (b) an intentional infliction of harm on the corporation or the shareholders;
  - (c) a violation of Section 16-10a-842; or
  - (d) an intentional violation of criminal law.
- (2) No provision authorized under this section may eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
  - (3) Any provision authorized under this section to be included in the articles of incorporation may also be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of shareholders of each voting group as would be required to approve an amendment to the articles of incorporation including the provision.
  - (4) Any foreign corporation authorized to transact business in this state, including any federally chartered depository institution authorized under federal law to transact business in this state, may adopt any provision authorized under this section.
  - (5) With respect to a corporation that is a depository institution regulated by the Department of Financial Institutions or by an agency of the federal government, any provision authorized under this section may include the elimination or limitation of the personal liability of a director or officer to the corporation's members or depositors.

Amended by Chapter 200, 1994 General Session

**16-10a-842 Liability of directors for unlawful distributions.**

- (1) A director who votes for or assents to a distribution made in violation of Section 16-10a-640 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 16-10a-640 or the articles of incorporation, if it is established that the director's duties were not performed in compliance with Section 16-10a-840. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.
- (2) A director held liable under Subsection (1) for an unlawful distribution is entitled to contribution:
  - (a) from every other director who could be held liable under Subsection (1) for the unlawful distribution; and
  - (b) from each shareholder, who accepted the distribution knowing the distribution was made in violation of Section 16-10a-640 or the articles of incorporation, the amount of the contribution from each shareholder being the amount of the distribution to the shareholder multiplied by the percentage of the amount of distribution to all shareholders that exceeded what could have been distributed to shareholders without violating Section 16-10a-640 or the articles of incorporation.
- (3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution is measured under Subsection 16-10a-640(5) or (7).

Enacted by Chapter 277, 1992 General Session

**16-10a-850 Definitions relating to conflicting interest transactions.**

As used in Sections 16-10a-850 through 16-10a-853:

- (1) "Conflicting interest" with respect to a corporation means the interest a director has respecting a transaction effected or proposed to be effected by the corporation or by any entity in which the corporation has a controlling interest if:
  - (a) whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person of

the director is a party to the transaction or has a beneficial financial interest in or is so closely linked to, the transaction and the transaction is so financially significant to the director or a related person of the director that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

- (b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in, or is so closely linked to, the transaction and the transaction is so financially significant to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:
  - (i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee or an entity to which the director owes a fiduciary duty, other than a fiduciary duty arising because the director is a director of the corporation;
  - (ii) an individual who is a general partner, principal, or employer of the director or who is a beneficiary of a fiduciary duty owed by the director, other than a fiduciary duty arising because the director is a director of the corporation; or
  - (iii) a person that controls one or more of the entities specified in Subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities or individuals specified in Subsection (1)(b)(i) or (1)(b)(ii).
- (2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by any entity controlled by the corporation respecting which a director has a conflicting interest.
- (3) "Qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction, or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.
- (4) "Required disclosure" means disclosure by the director who has a conflicting interest of:
  - (a) the existence and nature of the conflicting interest; and
  - (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.
- (5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or the entity controlled by the corporation becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-851 Judicial action.**

- (1) A transaction effected or proposed to be effected by a corporation or by any entity controlled by the corporation that is not a director's conflicting interest transaction may not be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, solely because a director, or any person with

whom or which the director has a personal, economic, or other association, has an interest in the transaction.

- (2) A director's conflicting interest transaction may not be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, solely because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:
  - (a) directors' action respecting the transaction was at any time taken in compliance with Section 16-10a-852;
  - (b) shareholders' action respecting the transaction was at any time taken in compliance with Section 16-10a-853; or
  - (c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-852 Directors' action.**

- (1) Directors' action respecting a transaction is taken for purposes of Subsection 16-10a-851(2)
  - (a) if the transaction received the affirmative vote of a majority of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with Subsection (2), provided that action by a committee is effective under this subsection only if:
    - (a) all its members are qualified directors; and
    - (b) its members are either all of the qualified directors or are appointed by the affirmative vote of a majority of the qualified directors.
- (2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction so that the director may not make the disclosure described in Section 16-10a-850(4)(b), then disclosure is sufficient for purposes of Subsection (1) if the director discloses to the directors voting on the transaction, before their vote, the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty.
- (3) A majority of the qualified directors on the board of directors or on the committee, as the case may be, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

Enacted by Chapter 277, 1992 General Session

**16-10a-853 Shareholders' action.**

- (1) Shareholders' action respecting a transaction is effective for purposes of Subsection 16-10a-851(2)(b) if a quorum existed pursuant to Subsection (2) and a majority of the votes entitled to be cast by holders of qualified shares present in person or by proxy at the meeting were cast in favor of the transaction after notice to shareholders describing the director's conflicting interest transaction, provision of the information referred to in Subsection (3), and required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

- (2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of Subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of holders of, or the voting of, shares that are not qualified shares.
- (3) For purposes of compliance with Subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes of the number and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.
- (4) If a shareholders' vote does not comply with Subsection (1) solely because of a failure of a director to comply with Subsection (3), and if the director establishes that the failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings under Subsection 16-10a-851(2)(c), take any action respecting the transaction and the director, and give any effect to the shareholders' vote, as it considers appropriate in the circumstances.

Enacted by Chapter 277, 1992 General Session

## **Part 9**

### **Indemnification**

#### **16-10a-901 Definitions.**

As used in Part 9, Indemnification:

- (1) "Corporation" includes any domestic or foreign entity that is a predecessor of a corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
- (3) "Expenses" include counsel fees.
- (4) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses.
- (5) "Officer," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person or of an employee benefit plan. An officer, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the corporation's request if that person's duties to the corporation also impose duties on, or otherwise involve services by, that

person to the plan or participants in, or beneficiaries of the plan. Unless the context requires otherwise, such terms include the estates or personal representatives of such persons.

- (6)
- (a) "Official capacity" means:
    - (i) when used with respect to a director, the office of director in a corporation; and
    - (ii) when used with respect to a person other than a director, as contemplated in Section 16-10a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by him on behalf of the corporation.
  - (b) "Official capacity" does not include service for any other foreign or domestic corporation, other person, or employee benefit plan.
- (7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Amended by Chapter 189, 2014 General Session

**16-10a-902 Authority to indemnify directors.**

- (1) Except as provided in Subsection (4), a corporation may indemnify an individual made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:
- (a) his conduct was in good faith; and
  - (b) he reasonably believed that his conduct was in, or not opposed to, the corporation's best interests; and
  - (c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.
- (2) A director's conduct with respect to any employee benefit plan for a purpose he reasonably believed to be in or not opposed to the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).
- (3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.
- (4) A corporation may not indemnify a director under this section:
- (a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
  - (b) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in his official capacity, in which proceeding he was adjudged liable on the basis that he derived an improper personal benefit.
- (5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Enacted by Chapter 277, 1992 General Session

**16-10a-903 Mandatory indemnification of directors.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue, or matter in the proceeding, to which he was a party because he is or was a director of the corporation, against reasonable expenses incurred by him in connection with the proceeding or claim with respect to which he has been successful.

Enacted by Chapter 277, 1992 General Session

**16-10a-904 Advance of expenses for directors.**

- (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:
  - (a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 16-10a-902;
  - (b) the director furnishes to the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
  - (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.
- (2) The undertaking required by Subsection (1)(b) shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.
- (3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 16-10a-906.

Amended by Chapter 378, 2010 General Session

**16-10a-905 Court-ordered indemnification of directors.**

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

- (1) if the court determines that the director is entitled to mandatory indemnification under Section 16-10a-903, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; and
- (2) if the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the applicable standard of conduct set forth in Section 16-10a-902 or was adjudged liable as described in Subsection 16-10a-902(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 16-10a-902(4) is limited to reasonable expenses incurred.

Enacted by Chapter 277, 1992 General Session

**16-10a-906 Determination and authorization of indemnification of directors.**

- (1) A corporation may not indemnify a director under Section 16-10a-902 unless authorized and a determination has been made in the specific case that indemnification of the director is permissible in the circumstances because the director has met the applicable standard of conduct set forth in Section 16-10a-902. A corporation may not advance expenses to a director under Section 16-10a-904 unless authorized in the specific case after the written affirmation

and undertaking required by Subsections 16-10a-904(1)(a) and (b) are received and the determination required by Subsection 16-10a-904(1)(c) has been made.

- (2) The determinations required by Subsection (1) shall be made:
  - (a) by the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or
  - (b) if a quorum cannot be obtained as contemplated in Subsection (2)(a), by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding, except that directors who are parties to the proceeding may participate in the designation of directors for the committee;
  - (c) by special legal counsel:
    - (i) selected by the board of directors or its committee in the manner prescribed in Subsection (2)(a) or (b); or
    - (ii) if a quorum of the board of directors cannot be obtained under Subsection (2)(a) and a committee cannot be designated under Subsection (2)(b), selected by a majority vote of the full board of directors, in which selection directors who are parties to the proceeding may participate; or
  - (d) by the shareholders, by a majority of the votes entitled to be cast by holders of qualified shares present in person or by proxy at a meeting.
- (3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.
- (4) Unless authorization is required by the bylaws, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by a body entitled under Subsection (2)(c) to select legal counsel.

Amended by Chapter 324, 2010 General Session

#### **16-10a-907 Indemnification of officers, employees, fiduciaries, and agents.**

Unless a corporation's articles of incorporation provide otherwise:

- (1) an officer of the corporation is entitled to mandatory indemnification under Section 16-10a-903, and is entitled to apply for court-ordered indemnification under Section 16-10a-905, in each case to the same extent as a director;
- (2) the corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director; and
- (3) a corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-908 Insurance.**

A corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him against the same liability under Section 16-10a-902, 16-10a-903, or 16-10a-907. Insurance may be procured from any insurance company designated by the board of directors, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock ownership or otherwise.

Enacted by Chapter 277, 1992 General Session

**16-10a-909 Limitations on indemnification of directors.**

- (1) A provision treating a corporation's indemnification of, or advance for expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its shareholders or board of directors, or in a contract (except an insurance policy) or otherwise, is valid only if and to the extent the provision is not inconsistent with this part. If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.
- (2) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Enacted by Chapter 277, 1992 General Session

## **Part 10**

### **Amendment of Articles of Incorporation and Bylaws**

**16-10a-1001 Authority to amend.**

- (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.
- (2) A shareholder does not have a vested property right resulting from any provision in the articles of incorporation, including any provision relating to management, control, capital structure, purpose, duration of the corporation, or dividend entitlement.

Enacted by Chapter 277, 1992 General Session

**16-10a-1002 Amendment by board of directors.**

- (1) Unless otherwise provided in the articles of incorporation, a corporation's board of directors may adopt, without shareholder action, one or more amendments to the corporation's articles of incorporation to:



- (a) delete the names and addresses of incorporators or initial directors or both from the articles of incorporation;
  - (b) change the information required by Subsection 16-17-203(1), but an amendment is not required to change the information;
  - (c) change each issued and unissued authorized share of a class into a greater number of whole shares if the corporation has only shares of that class outstanding;
  - (d) change the corporate name by adding the word "corporation," "incorporated," or "company," or an abbreviation of these words, or by substituting any such word or abbreviation for a similar word or abbreviation in the name; or
  - (e) make any other change expressly permitted by this chapter to be made without shareholder action.
- (2) The board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a corporation pursuant to Section 16-10a-1422.

Amended by Chapter 364, 2008 General Session

**16-10a-1003 Amendment by board of directors and shareholders.**

- (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.
- (2) For an amendment to the articles of incorporation proposed pursuant to Subsection (1) to be adopted:
  - (a) the board of directors shall recommend the amendment to the shareholders unless the board determines that, because of conflicts of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and
  - (b) shareholders entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
- (3) The board of directors may condition its submission of the proposed amendment on any basis.
- (4) The corporation shall give notice, in accordance with Section 16-10a-705, of the shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled to vote on the proposed amendment. The notice of the meeting shall state that one of the purposes of the meeting is to consider the proposed amendment and it shall contain or be accompanied by a copy or summary of the amendment.
- (5) Unless this chapter, the articles of incorporation, the bylaws, if authorized by the articles of incorporation, or the board of directors acting pursuant to Subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:
  - (a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights;
  - (b) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would materially and adversely affect rights in respect of the shares of the voting group because it:
    - (i) alters or abolishes a preferential right of the shares;
    - (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
    - (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

- (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
  - (v) reduces the number of shares owned by the shareholder to a fraction of a share or scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be voided under Section 16-10a-604; and
  - (c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting group entitled to vote on the amendment.
- (6) If any amendment to the articles of incorporation would impose personal liability on shareholders for the debts of a corporation, it must be approved by all of the outstanding shares affected, regardless of limitations or restrictions on the voting rights of the shares.

Amended by Chapter 378, 2010 General Session

**16-10a-1004 Voting on amendments by voting groups.**

- (1) Except as otherwise provided in Subsection (5), the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:
- (a) increase or decrease the aggregate number of authorized shares of the class;
  - (b) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
  - (c) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
  - (d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;
  - (e) change the shares of all or part of the class into a different number of shares of the same class;
  - (f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
  - (g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
  - (h) limit or deny an existing preemptive right of all or part of the shares of the class; or
  - (i) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.
- (2) Except as otherwise provided in Subsection (3), if a proposed amendment would affect a series of a class of shares in one or more of the ways described in Subsection (1), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.
- (3) If a proposed amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall instead vote together as a single voting group on the proposed amendment.
- (4) Except as otherwise provided in Subsection (5), a class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.
- (5) Notwithstanding the rights granted by this section to holders of the outstanding shares of a class or series to vote as a separate voting group, the rights may be otherwise restricted if so provided in the original articles of incorporation, in any amendment thereto which created the

class or series or which was adopted prior to the issuance of any shares of the class or series, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or series.

Enacted by Chapter 277, 1992 General Session

**16-10a-1005 Amendment before issuance of shares.**

If a corporation has not yet issued shares, its board of directors or, if no board of directors has been appointed, its incorporators, may adopt any amendments to the corporation's articles of incorporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1006 Articles of amendment.**

A corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) the date of each amendment's adoption;
- (5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (6) if an amendment was approved by the shareholders:
  - (a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and
  - (b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group.

Enacted by Chapter 277, 1992 General Session

**16-10a-1007 Restated articles of incorporation.**

- (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action. A corporation's incorporators may restate its articles of incorporation at any time if the corporation has not issued shares and if no directors have been appointed.
- (2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in Section 16-10a-1003.
- (3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder entitled to vote on the restatement, of the proposed shareholders' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and the notice shall contain or be accompanied by a copy of

the restatement that identifies any amendment or other change it would make in the articles of incorporation.

- (4) A corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:
  - (a) the name of the corporation;
  - (b) the text of the restated articles of incorporation;
  - (c) if the restatement contains an amendment to the articles of incorporation, the information required to be set forth in articles of amendment by Section 16-10a-1006;
  - (d) if the restatement does not contain an amendment to the articles of incorporation, a statement to that effect; and
  - (e) if the restatement was adopted by the board of directors or incorporators without shareholder action, a statement as to how the restatement was adopted and that shareholder action was not required.
- (5) Upon filing by the division or at any later effective date determined pursuant to Section 16-10a-123, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

Amended by Chapter 378, 2010 General Session

**16-10a-1008 Amendment pursuant to reorganization.**

- (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan or reorganization ordered or decreed by a court of competent jurisdiction under a statute of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-10a-202.
- (2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), the individual or individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:
  - (a) the name of the corporation;
  - (b) the text of each amendment approved by the court;
  - (c) the date of the court's order or decree approving the articles of amendment;
  - (d) the title of the reorganization proceeding in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the proceeding under a specified statute of the United States.
- (3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.
- (4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Enacted by Chapter 277, 1992 General Session

**16-10a-1008.5 Conversion to a nonprofit corporation.**

- (1)
  - (a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of incorporation pursuant to this section.
  - (b) The day on which a corporation files an amendment under this section, the corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit

Corporation Act, except that, notwithstanding Section 16-6a-203, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:

- (i) commenced its existence under this chapter; or
  - (ii) otherwise was created, formed, incorporated, or came into being.
- (2) The amendment of the articles of incorporation to convert to a nonprofit corporation shall:
- (a) revise the statement of purposes of the corporation;
  - (b) delete:
    - (i) the authorization for shares; and
    - (ii) any provision relating to authorized or issued shares;
  - (c) if any shares have been issued, provide for:
    - (i) the cancellation of issued shares; or
    - (ii) the conversion of the shares to membership interests in the nonprofit corporation; and
  - (d) make such other changes as may be necessary or desired.
- (3) If the corporation has issued shares, an amendment to convert to a nonprofit corporation shall be approved by all of the outstanding shares of all classes of shares regardless of limitations or restrictions on the voting rights of the shares.
- (4) If an amendment pursuant to this section is included in a merger agreement, this section applies, except that any provision for the cancellation or conversion of shares shall be set forth in the merger agreement and not in the amendment of the articles of incorporation.
- (5) The conversion of a corporation into a nonprofit corporation does not affect:
- (a) an obligation or liability of the converting corporation incurred before its conversion to a nonprofit corporation; or
  - (b) the personal liability of any person incurred before the conversion.
- (6)
- (a)
    - (i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (6)(a)(ii):
      - (A) vest in the nonprofit corporation to which the corporation converts;
      - (B) are the property of the nonprofit corporation; and
      - (C) are not considered transferred by the converting corporation to the nonprofit corporation by operation of this Subsection (6)(a).
    - (ii) This Subsection (6)(a) applies to the following of the converting corporation:
      - (A) its rights, privileges, and powers;
      - (B) its interests in property, whether real, personal, or mixed;
      - (C) debts due to the converting corporation;
      - (D) debts, liabilities, and duties of the converting corporation;
      - (E) rights and obligations under contract of the converting corporation; and
      - (F) other things and causes of action belonging to the converting corporation.
  - (b) The title to any real property vested by deed or otherwise in a corporation converting to a nonprofit corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion.
  - (c) A right of a creditor or a lien on property of a converting corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
  - (d) A debt, liability, or duty of a converting corporation:
    - (i) remains attached to the nonprofit corporation to which the corporation converts; and

- (ii) may be enforced against the nonprofit corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the nonprofit corporation in its capacity as a nonprofit corporation.
- (e) A converted corporation upon conversion to a nonprofit corporation pursuant to this section is considered the same entity as the nonprofit corporation.
- (f) In connection with a conversion of a corporation to a nonprofit corporation under this section, the interests or rights in the corporation which is to be converted may be exchanged or converted into one or more of the following:
  - (i) cash, property, interests, or rights in the nonprofit corporation to which it is converted; or
  - (ii) cash, property or interests in, or rights in another entity.
- (g) Unless otherwise agreed:
  - (i) a converting corporation is not required solely as a result of the conversion to:
    - (A) wind up its affairs;
    - (B) pay its liabilities; or
    - (C) distribute its assets; and
  - (ii) a conversion is not considered to constitute a dissolution of the corporation, but constitutes a continuation of the existence of the corporation in the form of a nonprofit corporation.

Amended by Chapter 386, 2009 General Session

**16-10a-1008.7 Conversion to or from a domestic limited liability company.**

- (1)
  - (a) A corporation may convert to a domestic limited liability company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 by complying with:
    - (i) this Subsection (1); and
    - (ii) Section 48-2c-1401 or 48-3a-1041.
  - (b) If a corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:
    - (i) comply with Section 48-2c-1402 or Sections 48-3a-1045 and 48-3a-1046; and
    - (ii) if the corporation has issued shares, provide for:
      - (A) the cancellation of any issued share; or
      - (B) the conversion of any issued share to a membership interest in the domestic limited liability company.
  - (c) Before articles of conversion, in accordance with Section 48-2c-1404, or a statement of conversion, in accordance with Section 48-3a-1045, may be filed with the division, the conversion shall be approved:
    - (i) in the manner provided for the articles of incorporation or bylaws of the corporation; or
    - (ii) if the articles of incorporation or bylaws of the corporation do not provide the method for approval:
      - (A) if the corporation has issued shares, by all of the outstanding shares of all classes of shares of the corporation regardless of limitations or restrictions on the voting rights of the shares; or
      - (B) if the corporation has not issued shares, by a majority of:
        - (I) the directors in office at the time that the conversion is approved by the board of directors; or
        - (II) if directors have not been appointed or elected, the incorporators.

- (2) A domestic limited liability company may convert to a corporation subject to this chapter by:
- (a) filing articles of incorporation in accordance with this chapter; and
  - (b) complying with Section 48-2c-1406 or 48-3a-1041, as appropriate pursuant to Section 48-3a-1405.

Amended by Chapter 412, 2013 General Session

**16-10a-1009 Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Enacted by Chapter 277, 1992 General Session

**16-10a-1020 Amendment of bylaws by board of directors or shareholders.**

- (1) A corporation's board of directors may amend the corporation's bylaws at any time, except to the extent that the articles of incorporation, the bylaws, or this chapter reserve this power exclusively to the shareholders, in whole or part.
- (2) A corporation's shareholders may amend the corporation's bylaws at any time, even though the bylaws may also be amended at any time by the board of directors.

Enacted by Chapter 277, 1992 General Session

**16-10a-1021 Bylaw changing quorum or voting requirement for shareholders.**

- (1) If authorized by the articles of incorporation or this chapter, the shareholders may adopt, amend, or repeal a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. Such action is subject to the provisions of Part 7, Shareholders.
- (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under Subsection (1) may not be adopted, amended, or repealed by the board of directors.

Amended by Chapter 85, 2007 General Session

**16-10a-1022 Bylaw changing quorum or voting requirement for directors.**

- (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors than is required by this chapter may be amended or repealed:
  - (a) if originally adopted by the shareholders, only by the shareholders, unless otherwise permitted as contemplated by Subsection (2); or
  - (b) if originally adopted by the board of directors, by the shareholders or unless otherwise provided in the articles of incorporation or bylaws, by the board of directors.
- (2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.
- (3) Action by the board of directors under Subsection (1)(b) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Amended by Chapter 378, 2010 General Session

**16-10a-1023 Bylaw provisions relating to election of directors.**

- (1) A corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association may elect in its bylaws to be governed in the election of directors by Subsection (2) unless the articles of incorporation:
  - (a) specifically prohibit the adoption of a bylaw electing to be governed by this section;
  - (b) alter the vote required by Subsection 16-10a-728(2); or
  - (c) provide for cumulative voting.
- (2) A corporation may elect to be governed in the election of directors as follows:
  - (a) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or the shareholder may indicate abstention, but without cumulating the votes.
  - (b) To be elected, a nominee shall receive a plurality of the votes cast by shareholders of shares entitled to vote in the election at a meeting at which a quorum is present.
  - (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the earlier of:
    - (i) 90 days after the day on which the corporation certifies the voting results; or
    - (ii) the day on which a person is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board for the purpose of Section 16-10a-810.
  - (d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period allowed by Subsection (2)(c).
  - (e) The board of directors may select any qualified person to fill the office held by a director who receives more votes against than for election.
- (3)
  - (a) Subsection (2) does not apply to an election of a director by a voting group if there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders.
  - (b) The determination of the number of candidates under Subsection (3)(a) is made:
    - (i) at the expiration of a time fixed by the articles of incorporation or bylaws for the advance notification of director candidates; or
    - (ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of directors not more than 14 days before notice is given of the meeting at which the election is to occur.
- (4) A person may not be considered a candidate for the purpose of Subsection (3) if the board of directors determines before the notice of meeting is given that the person's candidacy does not create a bona fide election contest.
- (5) A bylaw electing to be governed by this section may be repealed:
  - (a) by the shareholders if originally adopted by the shareholders, unless otherwise provided by the bylaws; or
  - (b) by the board of directors or the shareholders, if originally adopted by the board of directors.

Amended by Chapter 378, 2010 General Session



## **Part 11**

### **Merger and Share Exchange**

#### **16-10a-1101 Merger.**

- (1) A domestic corporation may merge into another entity if:
  - (a) the board of directors of the domestic corporation adopts and its shareholders, if required by Section 16-10a-1103, approve the plan of merger; and
  - (b) any other entity that plans to merge approves the plan of merger as provided by the statutes governing the entity.
- (2) The plan of merger referred to in Subsection (1) shall set forth:
  - (a) the name of each entity planning to merge and the name of the surviving entity into which each other entity plans to merge;
  - (b) the terms and conditions of the merger;
  - (c) the manner and basis of converting the ownership interests in each entity, in whole or part, into:
    - (i) ownership interests, obligations, or other securities of the surviving entity or another entity; or
    - (ii) cash or other property; and
  - (d) any amendments to the articles of incorporation or organization of the surviving entity to be effected by the merger.
- (3) The plan of merger may set forth other provisions relating to the merger.

Amended by Chapter 244, 2011 General Session

#### **16-10a-1102 Share exchange.**

- (1) A domestic corporation may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if the board of directors of each corporation adopts a plan of share exchange and the shareholders of the corporation, if required by Section 16-10a-1103, approve the plan of share exchange.
- (2) The plan of share exchange referred to in Subsection (1) shall set forth:
  - (a) the name of each corporation whose shares will be acquired and the name of the acquiring corporation;
  - (b) the terms and conditions of the share exchange; and
  - (c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for money or other property in whole or part.
- (3) The plan of share exchange may set forth other provisions relating to the share exchange.
- (4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise.

Amended by Chapter 378, 2010 General Session

#### **16-10a-1103 Action on plan.**

- (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of each corporation whose shares will be acquired in the share exchange, shall submit the plan of merger to its shareholders for approval, except as provided in:

- (a) Subsection (7);
  - (b) Section 16-10a-1104; or
  - (c) the plan of share exchange.
- (2) For a plan of merger or share exchange to be approved:
- (a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
  - (b) the shareholders entitled to vote on the plan of merger or share exchange shall approve the plan as provided in Subsection (5).
- (3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.
- (4) The corporation shall give notice of the shareholders' meeting in accordance with Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share exchange. The notice shall state that one of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.
- (5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
- (6) Separate voting by voting groups is required on a plan of:
- (a) merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under Section 16-10a-1004; and
  - (b) share exchange by each class or series of shares included in the share exchange, with each class or series constituting a separate voting group.
- (7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:
- (a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the merger;
  - (b) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;
  - (c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and
  - (d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.
- (8) As used in Subsection (7):
- (a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.
  - (b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

- (9) After a plan of merger or share exchange is approved, and at any time before the merger or share exchange becomes effective the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.
- (10) If a merger or share exchange is abandoned after articles of merger or share exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed effective date, the merger or share exchange may be prevented from becoming effective by delivering to the division for filing prior to the specified effective time and date a statement of abandonment stating that by appropriate corporate action the merger or share exchange has been abandoned. The statement of abandonment shall be executed in the same manner as the articles of merger or share exchange.

Amended by Chapter 378, 2010 General Session

**16-10a-1104 Merger of parent and subsidiary.**

- (1) By complying with the provision of this section, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may either merge the subsidiary into itself or merge itself into the subsidiary.
- (2) The board of directors of the parent shall adopt and its shareholders, if required by Subsection (3), shall approve a plan of merger that sets forth:
  - (a) the names of the parent and subsidiary and the name of the surviving entity;
  - (b) the terms and conditions of the merger;
  - (c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;
  - (d) any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and
  - (e) any other provisions relating to the merger as may be determined to be necessary or desirable.
- (3) A vote of the shareholders of the subsidiary is not required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6). If the parent will be the surviving corporation, no vote of its shareholders is required if all of the provisions of Subsection 16-10a-1103(7) are met with respect to the merger. If all the provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6).
- (4) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary (other than the parent) who does not waive this mailing requirement in writing.
- (5) The effective date of the merger may not be earlier than the date on which all shareholders of the subsidiary waived the mailing requirement of Subsection (4) or 10 days after the date the parent mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

Amended by Chapter 184, 1993 General Session

**16-10a-1105 Articles of merger or share exchange.**

- (1) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the division for filing articles of merger or share exchange setting forth:
  - (a) the plan of merger or share exchange;
  - (b) if shareholder approval was not required, a statement to that effect;
  - (c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:
    - (i) the designation and number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
    - (ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number of votes cast for the plan by each voting group entitled to vote separately was sufficient for approval by that voting group; and
  - (d) if the merger is being effected pursuant to Section 16-10a-1104:
    - (i) a statement that immediately prior to the merger the parent owned at least 90% of the outstanding shares of each class of the subsidiary; and
    - (ii) the effective date of the merger and a statement that the effective date complies with Subsection 16-10a-1104(5).
- (2) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange, which may not be prior to the date of filing.

Enacted by Chapter 277, 1992 General Session

**16-10a-1106 Effect of merger or share exchange.**

- (1) When a merger takes effect:
  - (a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.
  - (b) The title to all real estate and other property owned by each corporation party to the merger is transferred to and vested in the surviving corporation without reversion or impairment. The transfer to and vesting in the surviving corporation occurs by operation of law. No consent or approval of any other person is required in connection with the transfer or vesting unless consent or approval is specifically required in the event of merger by law or by express provision in any contract, agreement, decree, order, or other instrument to which any of the corporations so merged is a party or by which it is bound.
  - (c) The surviving corporation has all liabilities of each corporation party to the merger.
  - (d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur, or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.
  - (e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.
  - (f) The shares of each corporation party to the merger, which are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into money or other property, are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under Part 13, Dissenters' Rights.
- (2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange

rights provided in the articles of share exchange or to their rights under Part 13, Dissenters' Rights.

Amended by Chapter 189, 2014 General Session

**16-10a-1107 Merger or share exchange with foreign corporations.**

- (1) A domestic corporation may merge with a foreign entity or enter into a share exchange with a foreign corporation if:
  - (a) in a merger, the merger is permitted by the law of the state or country under whose law the foreign entity is incorporated or organized and the foreign entity complies with that law in effecting the merger;
  - (b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
  - (c) the foreign corporation complies with Section 16-10a-1105 if it is the surviving corporation of the merger or the acquiring corporation of the share exchange, and provides, in addition to the information required by Section 16-10a-1105, the address of its principal office; and
  - (d) the domestic corporation complies with:
    - (i) the applicable provisions of Sections 16-10a-1101 through 16-10a-1104; and
    - (ii) if it is the surviving corporation of the merger, Section 16-10a-1105.
- (2) Upon the merger or share exchange taking effect, the surviving foreign entity of a merger and the acquiring foreign corporation of a share exchange shall either:
  - (a) agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in Section 16-17-301;
  - (b) promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Part 13, Dissenters' Rights; and
  - (c) comply with Part 15, Authority of Foreign Corporation to Transact Business, if it is to transact business in this state.
- (3) Service effected pursuant to Subsection (2) is perfected at the earliest of:
  - (a) the date the foreign entity receives the process, notice, or demand;
  - (b) the date shown on the return receipt, if signed on behalf of the foreign entity; or
  - (c) five days after mailing.
- (4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign entity of a merger or an acquiring foreign corporation in a share exchange.
- (5) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange of shares or otherwise.

Amended by Chapter 244, 2011 General Session

**Part 12**  
**Sale of Property**

**16-10a-1201 Sale or mortgage of property without shareholder approval.**

- (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:
  - (a) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business or in a transaction not requiring shareholder approval as provided in Section 16-10a-1202;
  - (b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or
  - (c) transfer any or all of its property to a corporation all the shares of which are owned by the corporation.
- (2) Unless otherwise provided in the articles of incorporation, approval by the shareholders of a transaction described in Subsection (1) is not required.

Enacted by Chapter 277, 1992 General Session

**16-10a-1202 Sale of property requiring shareholder approval.**

- (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, other than in the usual and regular course of business and other than pursuant to a court order, in connection with its dissolution is subject to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, that is pursuant to a court order is not subject to the requirements of this section.
- (2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property, with or without the good will, of another entity which it controls, and if the shares or other interests held by the corporation in the other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to the transaction only if the board of directors proposes and the shareholders approve the consent.
- (3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be authorized:
  - (a) the board of directors shall recommend the transaction or the consent to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and
  - (b) the shareholders entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsections (5) and (6).
- (4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.
- (5) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice shall:
  - (a) state that the purpose, or one of the purposes, of the meeting is to consider:

- (i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or
  - (ii) in the case of action pursuant to Subsection (2), the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which shall be identified in the notice, the shares or other interests of which held by the corporation constitute all, or substantially all, of the property of the corporation; and
  - (b) contain or be accompanied by a description of the transaction, in the case of action pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the case of action pursuant to Subsection (2).
- (6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by each voting group entitled to vote on the transaction or the consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.
- (7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the corporation's board of directors subject to any contractual rights or other limitation on the abandonment, withholding, or revocation, without further shareholder action.
- (8) A transaction that constitutes a distribution is governed by Section 16-10a-640 and not by this section.

Amended by Chapter 378, 2010 General Session

## **Part 13**

### **Dissenters' Rights**

#### **16-10a-1301 Definitions.**

For purposes of Part 13, Dissenters' Rights:

- (1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.
- (2) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.
- (3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under Section 16-10a-1302 and who exercises that right when and in the manner required by Sections 16-10a-1320 through 16-10a-1328.
- (4) "Fair value" with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action.
- (5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the statutory rate set forth in Section 15-1-1, compounded annually.
- (6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares that are registered in the name of a nominee to the extent the beneficial owner is recognized by the corporation as the shareholder as provided in Section 16-10a-723.
- (7) "Shareholder" means the record shareholder or the beneficial shareholder.

Amended by Chapter 189, 2014 General Session

**16-10a-1302 Right to dissent.**

- (1) A shareholder, whether or not entitled to vote, is entitled to dissent from, and obtain payment of the fair value of shares held by him in the event of, any of the following corporate actions:
  - (a) consummation of a plan of merger to which the corporation is a party if:
    - (i) shareholder approval is required for the merger by Section 16-10a-1103 or the articles of incorporation; or
    - (ii) the corporation is a subsidiary that is merged with its parent under Section 16-10a-1104;
  - (b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired;
  - (c) consummation of a sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation for which a shareholder vote is required under Subsection 16-10a-1202(1), but not including a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale; and
  - (d) consummation of a sale, lease, exchange, or other disposition of all, or substantially all, of the property of an entity controlled by the corporation if the shareholders of the corporation were entitled to vote upon the consent of the corporation to the disposition pursuant to Subsection 16-10a-1202(2).
- (2) A shareholder is entitled to dissent and obtain payment of the fair value of his shares in the event of any other corporate action to the extent the articles of incorporation, bylaws, or a resolution of the board of directors so provides.
- (3) Notwithstanding the other provisions of this part, except to the extent otherwise provided in the articles of incorporation, bylaws, or a resolution of the board of directors, and subject to the limitations set forth in Subsection (4), a shareholder is not entitled to dissent and obtain payment under Subsection (1) of the fair value of the shares of any class or series of shares which either were listed on a national securities exchange registered under the federal Securities Exchange Act of 1934, as amended, or on the National Market System of the National Association of Securities Dealers Automated Quotation System, or were held of record by more than 2,000 shareholders, at the time of:
  - (a) the record date fixed under Section 16-10a-707 to determine the shareholders entitled to receive notice of the shareholders' meeting at which the corporate action is submitted to a vote;
  - (b) the record date fixed under Section 16-10a-704 to determine shareholders entitled to sign writings consenting to the proposed corporate action; or
  - (c) the effective date of the corporate action if the corporate action is authorized other than by a vote of shareholders.
- (4) The limitation set forth in Subsection (3) does not apply if the shareholder will receive for his shares, pursuant to the corporate action, anything except:
  - (a) shares of the corporation surviving the consummation of the plan of merger or share exchange;
  - (b) shares of a corporation which at the effective date of the plan of merger or share exchange either will be listed on a national securities exchange registered under the federal Securities Exchange Act of 1934, as amended, or on the National Market System of the National Association of Securities Dealers Automated Quotation System, or will be held of record by more than 2,000 shareholders;



- (c) cash in lieu of fractional shares; or
  - (d) any combination of the shares described in Subsection (4), or cash in lieu of fractional shares.
- (5) A shareholder entitled to dissent and obtain payment for his shares under this part may not challenge the corporate action creating the entitlement unless the action is unlawful or fraudulent with respect to him or to the corporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1303 Dissent by nominees and beneficial owners.**

- (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if the shareholder dissents with respect to all shares beneficially owned by any one person and causes the corporation to receive written notice which states the dissent and the name and address of each person on whose behalf dissenters' rights are being asserted. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the other shares held of record by him were registered in the names of different shareholders.
- (2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:
  - (a) the beneficial shareholder causes the corporation to receive the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and
  - (b) the beneficial shareholder dissents with respect to all shares of which he is the beneficial shareholder.
- (3) The corporation may require that, when a record shareholder dissents with respect to the shares held by any one or more beneficial shareholders, each beneficial shareholder shall certify to the corporation that both he and the record shareholders of all shares owned beneficially by him have asserted, or will timely assert, dissenters' rights as to all the shares unlimited on the ability to exercise dissenters' rights. The certification requirement shall be stated in the dissenters' notice given pursuant to Section 16-10a-1322.

Amended by Chapter 378, 2010 General Session

**16-10a-1320 Notice of dissenters' rights.**

- (1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at a shareholders' meeting, the meeting notice shall be sent to all shareholders of the corporation as of the applicable record date, whether or not they are entitled to vote at the meeting. The notice shall state that shareholders are or may be entitled to assert dissenters' rights under this part. The notice shall be accompanied by a copy of this part and the materials, if any, that under this chapter are required to be given the shareholders entitled to vote on the proposed action at the meeting. Failure to give notice as required by this subsection does not affect any action taken at the shareholders' meeting for which the notice was to have been given.
- (2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, any written or oral solicitation of a shareholder to execute a written consent to the action contemplated by Section 16-10a-704 shall be accompanied or preceded by a written notice stating that shareholders are or may be entitled to assert dissenters' rights under this part, by a copy of this part, and by the materials, if any, that under this chapter would have been required to be given to shareholders entitled to vote on the proposed action if the proposed action were submitted to

a vote at a shareholders' meeting. Failure to give written notice as provided by this subsection does not affect any action taken pursuant to Section 16-10a-704 for which the notice was to have been given.

Amended by Chapter 378, 2010 General Session

**16-10a-1321 Demand for payment -- Eligibility and notice of intent.**

- (1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:
  - (a) shall cause the corporation to receive, before the vote is taken, written notice of his intent to demand payment for shares if the proposed action is effectuated; and
  - (b) may not vote any of his shares in favor of the proposed action.
- (2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, a shareholder who wishes to assert dissenters' rights may not execute a writing consenting to the proposed corporate action.
- (3) In order to be entitled to payment for shares under this part, unless otherwise provided in the articles of incorporation, bylaws, or a resolution adopted by the board of directors, a shareholder shall have been a shareholder with respect to the shares for which payment is demanded as of the date the proposed corporate action creating dissenters' rights under Section 16-10a-1302 is approved by the shareholders, if shareholder approval is required, or as of the effective date of the corporate action if the corporate action is authorized other than by a vote of shareholders.
- (4) A shareholder who does not satisfy the requirements of Subsections (1) through (3) is not entitled to payment for shares under this part.

Amended by Chapter 378, 2010 General Session

**16-10a-1322 Dissenters' notice.**

- (1) If proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized, the corporation shall give a written dissenters' notice to all shareholders who are entitled to demand payment for their shares under this part.
- (2) The dissenters' notice required by Subsection (1) shall be sent no later than 10 days after the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302, and shall:
  - (a) state that the corporate action was authorized and the effective date or proposed effective date of the corporate action;
  - (b) state an address at which the corporation will receive payment demands and an address at which certificates for certificated shares shall be deposited;
  - (c) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
  - (d) supply a form for demanding payment, which form requests a dissenter to state an address to which payment is to be made;
  - (e) set a date by which the corporation must receive the payment demand and by which certificates for certificated shares must be deposited at the address indicated in the dissenters' notice, which dates may not be fewer than 30 nor more than 70 days after the date the dissenters' notice required by Subsection (1) is given;

- (f) state the requirement contemplated by Subsection 16-10a-1303(3), if the requirement is imposed; and
- (g) be accompanied by a copy of this part.

Amended by Chapter 378, 2010 General Session

**16-10a-1323 Procedure to demand payment.**

- (1) A shareholder who is given a dissenters' notice described in Section 16-10a-1322, who meets the requirements of Section 16-10a-1321, and wishes to assert dissenters' rights shall, in accordance with the terms of the dissenters' notice:
  - (a) cause the corporation to receive a payment demand, which may be the payment demand form contemplated in Subsection 16-10a-1322(2)(d), duly completed, or may be stated in another writing;
  - (b) deposit certificates for his certificated shares in accordance with the terms of the dissenters' notice; and
  - (c) if required by the corporation in the dissenters' notice described in Section 16-10a-1322, as contemplated by Section 16-10a-1327, certify in writing, in or with the payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights acquired beneficial ownership of the shares before the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action creating dissenters' rights under Section 16-10a-1302.
- (2) A shareholder who demands payment in accordance with Subsection (1) retains all rights of a shareholder except the right to transfer the shares until the effective date of the proposed corporate action giving rise to the exercise of dissenters' rights and has only the right to receive payment for the shares after the effective date of the corporate action.
- (3) A shareholder who does not demand payment and deposit share certificates as required, by the date or dates set in the dissenters' notice, is not entitled to payment for shares under this part.

Amended by Chapter 378, 2010 General Session

**16-10a-1324 Uncertificated shares.**

- (1) Upon receipt of a demand for payment under Section 16-10a-1323 from a shareholder holding uncertificated shares, and in lieu of the deposit of certificates representing the shares, the corporation may restrict the transfer of the shares until the proposed corporate action is taken or the restrictions are released under Section 16-10a-1326.
- (2) In all other respects, the provisions of Section 16-10a-1323 apply to shareholders who own uncertificated shares.

Enacted by Chapter 277, 1992 General Session

**16-10a-1325 Payment.**

- (1) Except as provided in Section 16-10a-1327, upon the later of the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus interest to each dissenter who has complied with Section 16-10a-1323, and who meets the requirements of Section 16-10a-1321, and who has not yet received payment.
- (2) Each payment made pursuant to Subsection (1) shall be accompanied by:

- (a)
  - (i)
    - (A) the corporation's balance sheet as of the end of its most recent fiscal year, or if not available, a fiscal year ending not more than 16 months before the date of payment;
    - (B) an income statement for that year;
    - (C) a statement of changes in shareholders' equity for that year and a statement of cash flow for that year, if the corporation customarily provides such statements to shareholders; and
    - (D) the latest available interim financial statements, if any;
  - (ii) the balance sheet and statements referred to in Subsection (2)(a)(i) shall be audited if the corporation customarily provides audited financial statements to shareholders;
- (b) a statement of the corporation's estimate of the fair value of the shares and the amount of interest payable with respect to the shares;
- (c) a statement of the dissenter's right to demand payment under Section 16-10a-1328; and
- (d) a copy of this part.

Amended by Chapter 324, 2010 General Session

Amended by Chapter 378, 2010 General Session

**16-10a-1326 Failure to take action.**

- (1) If the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302 does not occur within 60 days after the date set by the corporation as the date by which the corporation must receive payment demands as provided in Section 16-10a-1322, the corporation shall return all deposited certificates and release the transfer restrictions imposed on uncertificated shares, and all shareholders who submitted a demand for payment pursuant to Section 16-10a-1323 shall thereafter have all rights of a shareholder as if no demand for payment had been made.
- (2) If the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302 occurs more than 60 days after the date set by the corporation as the date by which the corporation must receive payment demands as provided in Section 16-10a-1322, then the corporation shall send a new dissenters' notice, as provided in Section 16-10a-1322, and the provisions of Sections 16-10a-1323 through 16-10a-1328 shall again be applicable.

Enacted by Chapter 277, 1992 General Session

**16-10a-1327 Special provisions relating to shares acquired after announcement of proposed corporate action.**

- (1) A corporation may, with the dissenters' notice given pursuant to Section 16-10a-1322, state the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action creating dissenters' rights under Section 16-10a-1302 and state that a shareholder who asserts dissenters' rights must certify in writing, in or with the payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights acquired beneficial ownership of the shares before that date. With respect to any dissenter who does not certify in writing, in or with the payment demand that he or the person on whose behalf the dissenters' rights are being asserted, acquired beneficial ownership of the shares before that date, the corporation may, in lieu of making the payment provided in Section 16-10a-1325, offer to make payment if the dissenter agrees to accept it in full satisfaction of his demand.

- (2) An offer to make payment under Subsection (1) shall include or be accompanied by the information required by Subsection 16-10a-1325(2).

Enacted by Chapter 277, 1992 General Session

**16-10a-1328 Procedure for shareholder dissatisfied with payment or offer.**

- (1) A dissenter who has not accepted an offer made by a corporation under Section 16-10a-1327 may notify the corporation in writing of his own estimate of the fair value of his shares and demand payment of the estimated amount, plus interest, less any payment made under Section 16-10a-1325, if:
- (a) the dissenter believes that the amount paid under Section 16-10a-1325 or offered under Section 16-10a-1327 is less than the fair value of the shares;
  - (b) the corporation fails to make payment under Section 16-10a-1325 within 60 days after the date set by the corporation as the date by which it must receive the payment demand; or
  - (c) the corporation, having failed to take the proposed corporate action creating dissenters' rights, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares as required by Section 16-10a-1326.
- (2) A dissenter waives the right to demand payment under this section unless he causes the corporation to receive the notice required by Subsection (1) within 30 days after the corporation made or offered payment for his shares.

Enacted by Chapter 277, 1992 General Session

**16-10a-1330 Judicial appraisal of shares -- Court action.**

- (1) If a demand for payment under Section 16-10a-1328 remains unresolved, the corporation shall commence a proceeding within 60 days after receiving the payment demand contemplated by Section 16-10a-1328, and petition the court to determine the fair value of the shares and the amount of interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unresolved the amount demanded.
- (2) The corporation shall commence the proceeding described in Subsection (1) in the district court of the county in this state where the corporation's principal office, or if it has no principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with, or whose shares were acquired by, the foreign corporation was located, or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Salt Lake County.
- (3) The corporation shall make all dissenters who have satisfied the requirements of Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are residents of this state whose demands remain unresolved, parties to the proceeding commenced under Subsection (2) as an action against their shares. All such dissenters who are named as parties shall be served with a copy of the petition. Service on each dissenter may be by registered or certified mail to the address stated in his payment demand made pursuant to Section 16-10a-1328. If no address is stated in the payment demand, service may be made at the address stated in the payment demand given pursuant to Section 16-10a-1323. If no address is stated in the payment demand, service may be made at the address shown on the corporation's current record of shareholders for the record shareholder holding the dissenter's shares. Service may also be made otherwise as provided by law.

- (4) The jurisdiction of the court in which the proceeding is commenced under Subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.
- (5) Each dissenter made a party to the proceeding commenced under Subsection (2) is entitled to judgment:
  - (a) for the amount, if any, by which the court finds that the fair value of his shares, plus interest, exceeds the amount paid by the corporation pursuant to Section 16-10a-1325; or
  - (b) for the fair value, plus interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under Section 16-10a-1327.

Amended by Chapter 378, 2010 General Session

**16-10a-1331 Court costs and counsel fees.**

- (1) The court in an appraisal proceeding commenced under Section 16-10a-1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds that the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under Section 16-10a-1328.
- (2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:
  - (a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of Sections 16-10a-1320 through 16-10a-1328; or
  - (b) against either the corporation or one or more dissenters, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.
- (3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

Enacted by Chapter 277, 1992 General Session

## **Part 14 Dissolution**

**16-10a-1401 Authorization of dissolution prior to issuance of shares.**

If a corporation has not yet issued shares, a majority of its directors, or if no directors have been elected or if elected directors are no longer serving, a majority of its incorporators may authorize the dissolution of the corporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1402 Authorization of dissolution after issuance of shares.**

- (1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in Subsection (2).
- (2) For a proposal to dissolve the corporation to be authorized:
  - (a) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
  - (b) the shareholders entitled to vote on the proposal must approve the proposal to dissolve as provided in Subsection (5).
- (3) The board of directors may condition the effectiveness of the dissolution on any basis.
- (4) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposal to dissolve the corporation.
- (5) The proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by that voting group, unless a greater vote is required by the articles of incorporation, the initial bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (3).

Amended by Chapter 378, 2010 General Session

**16-10a-1403 Articles of dissolution.**

- (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the division for filing articles of dissolution setting forth:
  - (a) the name of the corporation;
  - (b) the address of the corporation's principal office or, if none is to be maintained, a statement that the corporation will not maintain a principal office, and, if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1409;
  - (c) the date dissolution was authorized;
  - (d) if dissolution was authorized by the directors or the incorporators pursuant to Section 16-10a-1401, a statement to that effect;
  - (e) if dissolution was approved by the shareholders pursuant to Section 16-10a-1402:
    - (i) the number of votes entitled to be cast on the proposal to dissolve by each voting group entitled to vote separately thereon; and
    - (ii) either the total number of votes cast for and against dissolution by each voting group or the total number of undisputed votes cast for dissolution by each voting group and a statement that the number cast for dissolution was sufficient for approval; and
  - (f) any additional information the division determines is necessary or appropriate.
- (2) A corporation is dissolved upon the effective date of its articles of dissolution.

Enacted by Chapter 277, 1992 General Session

**16-10a-1404 Revocation of dissolution.**

- (1) A corporation may revoke its dissolution within 120 days after the effective date of the dissolution.

- (2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, in the case of authorization pursuant to Section 16-10a-1402, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
  - (a) the name of the corporation;
  - (b) the effective date of the dissolution that was revoked;
  - (c) the date that the revocation of dissolution was authorized;
  - (d) if pursuant to Subsection (2) the corporation's board of directors or incorporators revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;
  - (e) if pursuant to Subsection (2) the corporation's board of directors revoked a dissolution approved by the shareholders, a statement that the revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (f) if the revocation of dissolution was approved pursuant to Subsection (2) by the shareholders, the information required by Subsection 16-10a-1403(1)(e).
- (4) Revocation of dissolution is effective as provided in Subsection 16-10a-123(1). A provision may not be made for a delayed effective date for revocation pursuant to Subsection 16-10a-123(2).
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may carry on its business as if dissolution had never occurred.

Amended by Chapter 378, 2010 General Session

**16-10a-1405 Effect of dissolution.**

- (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
  - (a) collecting its assets;
  - (b) disposing of its properties that will not be distributed in kind to its shareholders;
  - (c) discharging or making provision for discharging its liabilities;
  - (d) distributing its remaining property among its shareholders according to their interests; and
  - (e) doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation does not:
  - (a) transfer title to the corporation's property;
  - (b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
  - (c) subject its directors or officers to standards of conduct different from those prescribed in Part 8, Directors and Officers;
  - (d) change:
    - (i) quorum or voting requirements for its board of directors or shareholders;
    - (ii) provisions for selection, resignation, or removal of its directors or officers or both; or
    - (iii) provisions for amending its bylaws or its articles of incorporation;
  - (e) prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (g) terminate the authority of the registered agent of the corporation.



Amended by Chapter 189, 2014 General Session

**16-10a-1406 Disposition of known claims by notification.**

- (1) A dissolved corporation may dispose of the known claims against it by following the procedures described in this section.
- (2) A dissolved corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice shall:
  - (a) describe the information that must be included in a claim;
  - (b) provide an address to which written notice of any claim must be given to the corporation;
  - (c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved corporation must receive the claim; and
  - (d) state that unless sooner barred by any other state statute limiting actions, the claim will be barred if not received by the deadline.
- (3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved corporation is barred if:
  - (a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved corporation by the deadline; or
  - (b) the dissolved corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
- (4) Claims which are not rejected by the dissolved corporation in writing within 90 days after receipt of the claim by the dissolved corporation shall be considered accepted.
- (5) The failure of the dissolved corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
- (6) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Amended by Chapter 378, 2010 General Session

**16-10a-1407 Disposition of claims by publication -- Disposition in absence of publication.**

- (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
- (2) The notice contemplated in Subsection (1) shall:
  - (a) be published:
    - (i) one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if it has no principal office in this state, in Salt Lake County; and
    - (ii) as required in Section 45-1-101;
  - (b) describe the information that must be included in a claim and provide an address at which any claim must be given to the corporation; and
  - (c) state that unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice.

- (3) If the dissolved corporation publishes a newspaper or website notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.
- (4)
  - (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.
  - (b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.
- (5) If a dissolved corporation does not publish a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within seven years after the date the corporation was dissolved.

Amended by Chapter 378, 2010 General Session

**16-10a-1408 Enforcement of claims against dissolved corporations.**

A claim may be enforced:

- (1) under Section 16-10a-1406 or 16-10a-1407 against the dissolved corporation, to the extent of its undistributed assets; or
- (2) against a shareholder of the dissolved corporation, if the assets have been distributed in liquidation; but a shareholder's total liability for all claims under this section may not exceed the total value of assets distributed to him, as that value is determined at the time of distribution. Any shareholder required to return any portion of the value of assets received by him in liquidation shall be entitled to contribution from all other shareholders. The contributions shall be in accordance with the shareholders' respective rights and interests and may not exceed the value of the assets received in liquidation.

Amended by Chapter 79, 1996 General Session

**16-10a-1409 Service on dissolved corporation.**

- (1) A dissolved corporation shall either:
  - (a) maintain a registered agent in this state to accept service of process on its behalf; or
  - (b) be deemed to have authorized service of process on it by registered or certified mail, return receipt requested, to the address of its principal office, if any, as set forth in its articles of dissolution or as last changed by notice delivered to the division for filing or to the address for service of process that is stated in its articles of dissolution or as last changed by notice delivered to the division for filing.
- (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:
  - (a) the date the dissolved corporation receives the process, notice, or demand;
  - (b) the date shown on the return receipt, if signed on behalf of the dissolved corporation; or
  - (c) five days after mailing.
- (3) Subsection (1) does not prescribe the only means, or necessarily the required means, of service on a dissolved corporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1420 Grounds for administrative dissolution.**

The division may commence a proceeding under Section 16-10a-1421 for administrative dissolution of a corporation if:

- (1) the corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (2) the corporation does not deliver a corporate or annual report to the division when it is due;
- (3) the corporation is without a registered agent in this state for 30 days or more;
- (4) the corporation does not give notice to the division within 30 days that its registered agent has been changed or that its registered agent has resigned; or
- (5) the corporation's period of duration stated in its articles of incorporation expires.

Amended by Chapter 364, 2008 General Session

**16-10a-1421 Procedure for and effect of administrative dissolution.**

- (1) If the division determines that one or more grounds exist under Section 16-10a-1420 for dissolving a corporation, it shall mail the corporation written notice of:
  - (a) the division's determination that one or more grounds exist for dissolving; and
  - (b) the grounds for dissolving the corporation.
- (2)
  - (a) If the corporation does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided by Subsection (1), the division shall administratively dissolve the corporation.
  - (b) If a corporation is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved corporation, stating the date of dissolution specified in Subsection (2)(d).
  - (c) The division shall mail a copy of the notice of administrative dissolution to:
    - (i) the last registered agent of the dissolved corporation; or
    - (ii) if there is no registered agent of record, at least one officer of the corporation.
  - (d) A corporation's date of dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).
  - (e) On the date of dissolution, any assumed names filed on behalf of the dissolved corporation under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.
  - (f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:
    - (i) transacting business in this state; or
    - (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.
  - (g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated in accordance with Section 16-10a-1422, the registration of the name of the corporation and any assumed names filed on its behalf are reinstated back to the date of dissolution.
- (3)
  - (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence, but may not carry on any business except:

- (i) the business necessary to wind up and liquidate its business and affairs under Section 16-10a-1405; and
  - (ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and 16-10a-1407.
- (b) If the corporation is reinstated in accordance with Section 16-10a-1422, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.
- (4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.
- (5) A notice mailed under this section shall be:
  - (a) mailed first-class, postage prepaid; and
  - (b) addressed to the most current mailing address appearing on the records of the division for:
    - (i) the registered agent of the corporation, if the notice is required to be mailed to the registered agent; or
    - (ii) the officer of the corporation that is mailed the notice, if the notice is required to be mailed to an officer of the corporation.

Amended by Chapter 386, 2009 General Session

**16-10a-1422 Reinstatement following dissolution.**

- (1) A corporation dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:
  - (a) the effective date of the corporation's dissolution;
  - (b) the corporation's corporate name as of the effective date of dissolution;
  - (c) that the grounds for dissolution either did not exist or have been eliminated;
  - (d) the corporate name under which the corporation is being reinstated;
  - (e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 16-10a-401;
  - (f) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by the corporation to the State Tax Commission, or otherwise imposed by applicable laws of this state have been paid;
  - (g) the address of its registered office in this state;
  - (h) the name of its registered agent at the office stated in Subsection (1)(g); and
  - (i) any additional information the division determines to be necessary or appropriate.
- (2) The corporation shall include in or with the application for reinstatement:
  - (a) the written consent to appointment by the designated registered agent; and
  - (b) a certificate from the State Tax Commission reciting that all taxes owed by the corporation have been paid.
- (3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice of:
  - (a) the revocation; and
  - (b) the effective date of the revocation.
- (4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:
  - (a) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

- (b) the corporation may carry on its business, under the name stated pursuant to Subsection (1)
- (d), as if the administrative dissolution had never occurred.

Amended by Chapter 386, 2009 General Session

**16-10a-1423 Appeal from denial of reinstatement.**

If the division denies a corporation's application for reinstatement under Section 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice:

- (1) setting forth the reasons for denying the application; and
- (2) stating that the corporation has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 386, 2009 General Session

**16-10a-1430 Grounds for judicial dissolution.**

- (1) A corporation may be dissolved in a proceeding by the attorney general or the division director if it is established that:
  - (a) the corporation obtained its articles of incorporation through fraud; or
  - (b) the corporation has continued to exceed or abuse the authority conferred upon it by law.
- (2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:
  - (a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
  - (b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (d) the corporate assets are being misapplied or wasted.
- (3) A corporation may be dissolved in a proceeding by a creditor if it is established that:
  - (a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or
  - (b) the corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.
- (4) A corporation may be dissolved in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Enacted by Chapter 277, 1992 General Session

**16-10a-1431 Procedure for judicial dissolution.**

- (1) A proceeding by the attorney general or director of the division to dissolve a corporation shall be brought in either the district court of the county in this state in which the principal office of the corporation is situated or the district court of Salt Lake County. A proceeding brought by any other party named in Section 16-10a-1430 shall be brought in the district court of the county in

this state where the corporation's principal office is located or, if it has no principal office in this state, in the district court of Salt Lake County.

- (2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
- (3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Amended by Chapter 364, 2008 General Session

**16-10a-1432 Receivership or custodianship.**

- (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.
- (2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
- (3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
  - (a) the receiver:
    - (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and
    - (ii) may sue and defend in its own name as receiver of the corporation in all courts of this state; or
  - (b) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
- (4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and its creditors.
- (5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

Enacted by Chapter 277, 1992 General Session

**16-10a-1433 Decree of dissolution.**

- (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 16-10a-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the division for filing.
- (2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 16-10a-1405 and the giving of

notice to its registered agent, or to the division if it has no registered agent, and to claimants in accordance with Sections 16-10a-1406 and 16-10a-1407.

(3) The court's order may be appealed as in other civil proceedings.

Enacted by Chapter 277, 1992 General Session

**16-10a-1434 Election to purchase in lieu of dissolution.**

(1) In a proceeding under Subsection 16-10a-1430(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase all shares of the corporation owned by the petitioning shareholder, at the fair value of the shares, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

- (2)
- (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under Subsection 16-10a-1430(2) or at any later time as the court in its discretion may allow. If the corporation files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase all shares of the corporation owned by the petitioning shareholder, the corporation shall purchase the shares in the manner provided in this section.
  - (b) If the corporation does not file an election with the court within the time period, but an election to purchase all shares of the corporation owned by the petitioning shareholder is filed by one or more shareholders within the time period, the corporation shall, within 10 days after the later of:
    - (i) the end of the time period allowed for the filing of elections to purchase under this section; or
    - (ii) notification from the court of an election by shareholders to purchase all shares of the corporation owned by the petitioning shareholder as provided in this section, give written notice of the election to purchase to all shareholders of the corporation, other than the petitioning shareholder. The notice shall state the name and number of shares owned by the petitioning shareholder and the name and number of shares owned by each electing shareholder. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase shares in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.
  - (c) Shareholders who wish to participate in the purchase of shares from the petitioning shareholder shall file notice of their intention to join in the purchase by the electing shareholders, no later than 30 days after the effective date of the corporation's notice of their right to join in the election to purchase.
  - (d) All shareholders who have filed with the court an election or notice of their intention to participate in the election to purchase the shares of the corporation owned by the petitioning shareholder thereby become irrevocably obligated to participate in the purchase of shares from the petitioning shareholders upon the terms and conditions of this section, unless the court otherwise directs.
  - (e) After an election has been filed by the corporation or one or more shareholders, the proceedings under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the court determines that it would be equitable to the corporation and the shareholders, other

than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of:

- (a) the corporation's filing of an election to purchase all shares of the corporation owned by the petitioning shareholder; or
- (b) the corporation's mailing of a notice to its shareholders of the filing of an election by the shareholders to purchase all shares of the corporation owned by the petitioning shareholder, the petitioning shareholder and electing corporation or shareholders reach agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the court shall enter an order directing the purchase of petitioner's shares, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party the court shall stay the proceedings under Subsection 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the day before the date on which the petition under Subsection 16-10a-1430(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5)

- (a) Upon determining the fair value of the shares of the corporation owned by the petitioning shareholder, the court shall enter an order directing the purchase of the shares upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of shares among shareholders if the shares are to be purchased by shareholders.
- (b) In allocating the petitioning shareholders' shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different share classes to the extent practicable. The court may direct that holders of a specific class or classes may not participate in the purchase. The court may not require any electing shareholder to purchase more of the shares of the corporation owned by the petitioning shareholder than the number of shares that the purchasing shareholder may have set forth in his election or notice of intent to participate filed with the court as the maximum number of shares he is willing to purchase.
- (c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.
- (d) If the court finds that the petitioning shareholder had probable grounds for relief under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under Section 16-10a-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7)

- (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402 and



16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days after notice.

- (b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously asserted on behalf of the corporation.
- (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Section 16-10a-640.

Amended by Chapter 378, 2010 General Session

**16-10a-1440 Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Amended by Chapter 198, 1995 General Session

## **Part 15**

### **Authority of Foreign Corporation to Transact Business**

**16-10a-1501 Authority to transact business required.**

- (1) A foreign corporation may not transact business in this state until its application for authority to transact business is filed by the division. This applies to foreign corporations that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.
- (2) The following, nonexhaustive list of activities does not constitute "transacting business" within the meaning of Subsection (1):
  - (a) maintaining, defending, or settling in its own behalf any legal proceeding;
  - (b) holding meetings of the board of directors, shareholders, or otherwise carrying on activities concerning internal corporate affairs;
  - (c) maintaining bank accounts;
  - (d) maintaining offices or agencies for the transfer, exchange, and registration of its own securities or maintaining trustees or depositories with respect to those securities;
  - (e) selling through independent contractors;
  - (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
  - (g) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;
  - (h) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;
  - (i) owning, without more, real or personal property;

- (j) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
  - (k) transacting business in interstate commerce;
  - (l) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in such security, or any combination of such transactions; and
  - (m) any other activities not considered to constitute transacting business in this state in the discretion of the division.
- (3) Nothing in this section limits or affects the right to subject a foreign corporation which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign corporation any process, notice, or demand required or permitted by law to be served upon a corporation pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

Amended by Chapter 79, 1996 General Session

**16-10a-1502 Consequences of transacting business without authority.**

- (1) A foreign corporation transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.
- (2) The successor to a foreign corporation that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign corporation or its successor.
- (3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed by the division.
- (4) A foreign corporation that transacts business in this state without authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of \$5,000 for each year. Each officer of a foreign corporation who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign corporation who transacts business in this state on behalf of a foreign corporation that is not authorized is subject to a civil penalty, payable to this state, not exceeding \$1,000.
- (5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in an appropriate court in Salt Lake County or in any other county in this state in which the corporation has a registered, principal, or business office or in which it has transacted business. Upon a finding by the court that a foreign corporation or any of its officers or agents have transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any corporate rights and privileges in this state. Upon issuance of the injunction, the foreign corporation shall be enjoined from

transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign corporation has otherwise complied with the provisions of this part.

- (6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have authority to transact business in this state does not impair the validity of its corporate acts, nor does the failure prevent the corporation from defending any proceeding in this state.

Amended by Chapter 184, 1993 General Session

**16-10a-1503 Application for authority to transact business.**

- (1) A foreign corporation may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:
- (a) its corporate name and its assumed name, if any;
  - (b) the name of the state or country under whose law it is incorporated;
  - (c) its date of incorporation and period of its corporate duration;
  - (d) the street address of its principal office;
  - (e) the information required by Subsection 16-17-203(1);
  - (f) the names and usual business addresses of its current directors and officers;
  - (g) the date it commenced or expects to commence transacting business in this state; and
  - (h) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.
- (2) The foreign corporation shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the lieutenant governor or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate of existence shall be dated within 90 days before the day on which the application for authority to transact business by the division is filed.
- (3)
- (a) The division may permit a tribal corporation to apply for authority to transact business in this state in the same manner as a foreign corporation incorporated in another state.
  - (b) If a tribal corporation elects to apply for authority to transact business in this state, for purposes of this chapter, the tribal corporation shall be treated in the same manner as a foreign corporation incorporated under the laws of another state.

Amended by Chapter 43, 2010 General Session

**16-10a-1504 Amended application for authority to transact business.**

- (1) A foreign corporation authorized to transact business in this state shall deliver an amended application for authority to transact business to the division for filing if the foreign corporation changes:
- (a) its corporate name or its assumed corporate name;
  - (b) the period of its duration;
  - (c) the state or country of its incorporation; or
  - (d) any of the information required by Subsection 16-17-203(1).
- (2) The requirements of Section 16-10a-1503 for obtaining an original application for authority to transact business apply to filing an amended application for authority to transact business under this section.

Amended by Chapter 364, 2008 General Session

**16-10a-1505 Effect of filing an application for authority to transact business.**

- (1) Filing an application for authority to transact business authorizes the foreign corporation to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this part.
- (2) A foreign corporation authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic corporation of like character. Except as otherwise provided by this chapter, a foreign corporation authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.
- (3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Enacted by Chapter 277, 1992 General Session

**16-10a-1506 Corporate name and assumed corporate name of foreign corporation.**

- (1) Except as provided in Subsection (2), if the corporate name of a foreign corporation does not satisfy the requirements of Section 16-10a-401, which applies to domestic corporations, the foreign corporation, in order to obtain authority to transact business in this state, shall assume for use in this state a name that satisfies the requirements of Section 16-10a-401.
- (2) A foreign corporation may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for filing either:
  - (a) a written consent to the foreign corporation's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or
  - (b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign corporation to use the requested name in this state.
- (3) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:
  - (a) has merged with the other corporation; or
  - (b) has been formed by reorganization of the other corporation.
- (4) If a foreign corporation authorized to transact business in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-10a-401, it may not transact business in this state under the changed name but shall use an assumed corporate name that does meet the requirements of this section and shall deliver to the division for filing an amended application for authority to transact business pursuant to Section 16-10a-1504.

Amended by Chapter 378, 2010 General Session

**16-10a-1507 Registered name of foreign corporation.**

- (1) A foreign corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic corporation under Section

16-10a-401. If the foreign corporation's corporate name would not be available for such use, then the foreign corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 16-10a-401: "corporation," "incorporated," "company," "corp.," "inc.," or "co."

- (2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:
  - (a) setting forth its corporate name, the name to be registered which shall meet the requirements of Section 16-10a-401 that apply to domestic corporations, the state or country and date of incorporation, and a brief description of the nature of the business in which it is engaged; and
  - (b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign corporation is in existence or has authority to transact business under the laws of the state or country in which it is organized.
- (3) The name is registered for the applicant upon the effective date of the application, and the initial registration is effective until the end of the calendar year in which it became effective.
- (4) A foreign corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2), between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.
- (5) A foreign corporation that has in effect registration of its corporate name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign corporation by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application shall meet the requirements of this part.
- (6)
  - (a) A foreign corporation that has in effect registration of its corporate name may terminate the registration at any time by delivering to the division for filing a statement of termination setting forth the corporate name and stating that the registration is terminated.
  - (b) A registration automatically terminates upon the filing of an application for authority to transact business in this state under the registered name.
- (7) The registration of a corporate name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to transact business in this state under the registered name, but the authorization is subject to the limitations applicable to corporate names as set forth in Section 16-10a-403.

Amended by Chapter 378, 2010 General Session

#### **16-10a-1510 Resignation of registered agent of foreign corporation.**

- (1) The registered agent of a foreign corporation authorized to transact business in this state may resign the agency appointment by delivering to the division for filing a statement of resignation, which shall be signed by the resigning registered agent and accompanied by two exact or conformed copies of the statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The statement of resignation filed by the registered agent shall include a declaration that notice of the resignation has been given to the corporation.

- (2) After filing the statement of resignation, the division shall deliver one copy of the resignation to the registered office of the foreign corporation and the other copy to its principal office.
- (3) The agency appointment terminates, and the registered office discontinues if so provided, on the 31st day after the filing date of the statement of resignation.

Amended by Chapter 378, 2010 General Session

**16-10a-1511 Service on foreign corporation.**

- (1) Except as provided in Subsection (3), the division may serve a foreign corporation by first-class, postage prepaid United States mail.
- (2) The registered agent of a foreign corporation authorized to transact business in this state is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.
- (3)
  - (a) If a foreign corporation authorized to transact business in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign corporation may be served by mail that is:
    - (i) registered or certified;
    - (ii) return receipt requested; and
    - (iii) addressed to the foreign corporation at its principal office.
  - (b) Service is perfected under this Subsection (3) at the earliest of:
    - (i) the date the foreign corporation receives the process, notice, or demand;
    - (ii) the date shown on the return receipt, if signed on behalf of the foreign corporation; or
    - (iii) five days after mailing.
- (4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation authorized to transact business in this state.

Amended by Chapter 220, 1999 General Session

**16-10a-1520 Withdrawal of foreign corporation.**

- (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until its application for withdrawal has been filed by the division.
- (2) A foreign corporation authorized to transact business in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:
  - (a) its corporate name and its assumed name, if any;
  - (b) the name of the state or country under whose law it is incorporated;
  - (c) the address of its principal office, or if none is to be maintained, a statement that the corporation will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1521;
  - (d) that the corporation is not transacting business in this state and that it surrenders its authority to transact business in this state;
  - (e) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and
  - (f) any additional information that the division determines is necessary or appropriate to determine whether the corporation is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.

- (3) A foreign corporation's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations have been paid and the division has received a tax clearance certificate from the State Tax Commission.

Enacted by Chapter 277, 1992 General Session

**16-10a-1521 Service on withdrawn foreign corporation.**

- (1) A foreign corporation that has withdrawn from this state pursuant to Section 16-10a-1520 shall either:
  - (a) maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal; or
  - (b) be considered to have authorized service of process on it in connection with any cause of action by registered or certified mail, return receipt requested, to:
    - (i) the address of its principal office, if any, set forth in its application for withdrawal or as last changed by notice delivered to the division for filing; or
    - (ii) the address for service of process that is stated in its application for withdrawal or as last changed by notice delivered to the division for filing.
- (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:
  - (a) the date the withdrawn foreign corporation receives the process, notice, or demand;
  - (b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign corporation; or
  - (c) five days after mailing.
- (3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a withdrawn foreign corporation.

Amended by Chapter 364, 2008 General Session

**16-10a-1530 Grounds for revocation.**

The division may commence a proceeding under Section 16-10a-1531 to revoke the authority of a foreign corporation to transact business in this state if:

- (1) the foreign corporation does not deliver its annual report to the division when it is due;
- (2) the foreign corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (3) the foreign corporation is without a registered agent in this state for 30 days or more;
- (4) the foreign corporation does not inform the division by an appropriate filing within 30 days of the change or resignation that its registered agent has changed or that its registered agent has resigned;
- (5) an incorporator, director, officer, or agent of the foreign corporation signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or
- (6) the division receives a duly authenticated certificate from the lieutenant governor or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the corporation has dissolved or disappeared as the result of a merger.

Amended by Chapter 364, 2008 General Session

**16-10a-1531 Procedure for and effect of revocation.**

- (1) If the division determines that one or more grounds exist under Section 16-10a-1530 for revoking the authority of a foreign corporation to transact business in this state, the division shall mail to the foreign corporation written notice of:
  - (a) the division's determination that one or more grounds exist for revocation; and
  - (b) the grounds for revocation.
- (2)
  - (a) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign corporation's authority to transact business in this state.
  - (b) If a foreign corporation's authority to transact business in this state is revoked under Subsection (2)(a), the division shall mail to the foreign corporation written notice of:
    - (i) revocation; and
    - (ii) the effective date of the revocation.
  - (c) The division shall mail a copy of the notice to:
    - (i) the last registered agent of the foreign corporation; or
    - (ii) if there is no registered agent of record, at least one officer of the corporation.
- (3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the division's certificate revoking the corporation's certificate of authority.
- (4) Revocation of a foreign corporation's authority to transact business in this state does not terminate the authority of the registered agent of the corporation.
- (5) A notice mailed under this section shall be:
  - (a) mailed first-class, postage prepaid; and
  - (b) addressed to the most current mailing address appearing on the records of the division for:
    - (i) the registered agent of the foreign corporation, if the notice is required to be mailed to the registered agent; or
    - (ii) the officer of the foreign corporation that is mailed the notice, if the notice is required to be mailed to an officer of the foreign corporation.

Amended by Chapter 386, 2009 General Session

**16-10a-1532 Appeal from revocation.**

- (1) A foreign corporation may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered or principal office of the corporation was located or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 16-10a-1531. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the corporation's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.
- (2) The court may summarily order the division to reinstate the authority of the foreign corporation to transact business in this state or it may take any other action it considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

Amended by Chapter 131, 2000 General Session

**16-10a-1533 Domestication of foreign corporations.**



- (1)
  - (a) Any foreign corporation may become a domestic corporation by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if the board of directors of the corporation adopts, and its shareholders approve, the domestication.
  - (b) The adoption and approval of the domestication shall be in accordance with the consent requirements of Section 16-10a-1003 for amending articles of incorporation.
- (2)
  - (a) The articles of domestication shall meet the requirements applicable to articles of incorporation set forth in Sections 16-10a-120 and 16-10a-202, except that:
    - (i) the articles of domestication need not name, or be signed by, the incorporators of the foreign corporation; and
    - (ii) any reference to the corporation's registered office, registered agent, or directors shall be to the registered office and agent in Utah, and the directors then in office at the time of filing the articles of domestication.
  - (b) The articles of domestication shall set forth:
    - (i) the date on which and jurisdiction where the corporation was first formed, incorporated, or otherwise came into being;
    - (ii) the name of the corporation immediately prior to the filing of the articles of domestication;
    - (iii) any jurisdiction that constituted the seat, location of incorporation, principal place of business, or central administration of the corporation immediately prior to the filing of the articles of domestication; and
    - (iv) a statement that the articles of domestication were adopted by the corporation's board of directors and approved by its shareholders.
- (3)
  - (a) Upon the filing of articles of domestication with the division, the corporation shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter, and shall continue as if it had been incorporated under this chapter.
  - (b) Notwithstanding any other provisions of this chapter, the existence of the corporation shall be considered to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being.
- (4) The articles of domestication, upon filing with the division, shall become the articles of incorporation of the corporation, and shall be subject to amendments or restatement the same as any other articles of incorporation under this chapter.
- (5) The domestication of any corporation in this state may not be considered to affect any obligation or liability of the corporation incurred prior to its domestication.
- (6) The filing of the articles of domestication does not affect the choice of law applicable to the corporation, except that from the date the articles of domestication are filed, the law of Utah, including the provisions of this chapter, shall apply to the corporation to the same extent as if the corporation had been incorporated as a corporation of this state on that date.

Amended by Chapter 378, 2010 General Session

**16-10a-1533.5 Transfer to another state.**

- (1) A domestic corporation may transfer to or domesticate in a jurisdiction other than this state if:
  - (a) that jurisdiction permits the transfer to or domestication of the corporation in the jurisdiction; and

- (b) the transfer is approved by the shareholders as provided in the corporation's bylaws or, if the bylaws do not so provide, by all of the shareholders.
- (2)
  - (a) A domestic corporation transfers to or domesticates in a jurisdiction other than this state by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2)(b).
  - (b) Articles of transfer shall state:
    - (i) the name of the corporation;
    - (ii) the date of filing of the corporation's original articles of incorporation with the division;
    - (iii) the jurisdiction to which the corporation is to be transferred or in which it is to be domesticated;
    - (iv) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;
    - (v) that the transfer or domestication has been approved by the shareholders;
    - (vi) that the existence of the corporation as a domestic corporation of this state shall cease when the articles of transfer become effective;
    - (vii) the agreement of the corporation that it may be served with process in this state in any proceeding for enforcement of any obligation of the corporation arising while it was a corporation under the laws of this state; and
    - (viii) if the corporation does not apply for authority to transact business in this state as a foreign corporation pursuant to Section 16-10a-1503, the address to which a copy of service of process may be made under Subsection (2)(b)(vii).
- (3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and after payment to the division of the fees prescribed under this chapter, the corporation shall cease to exist as a domestic corporation of this state. Thereafter, a certificate of the division as to the transfer is prima facie evidence of the transfer or domestication by the corporation out of this state.
- (4) Transfer or domestication of a corporation out of this state in accordance with this section and the resulting cessation of its existence as a domestic corporation of this state may not be considered to affect:
  - (a) an obligation or liability of the corporation incurred before the transfer or domestication or the personal liability of any person incurred before the transfer or domestication, including, any taxes owing to this state; or
  - (b) the choice of law applicable to the corporation with respect to matters arising before the transfer or domestication.

Enacted by Chapter 184, 2012 General Session

## **Part 16**

### **Records, Information, and Reports**

#### **16-10a-1601 Corporate records.**

- (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken on behalf of the corporation by a committee of the board of directors in place of the board of directors, and a record of all waivers of notices of

- meetings of shareholders, meetings of the board of directors, or any meetings of committees of the board of directors.
- (2) A corporation shall maintain appropriate accounting records.
  - (3) A corporation or its agent shall maintain a record of the names and addresses of its shareholders, in a form that permits preparation of a list of shareholders:
    - (a) that is arranged by voting group and within each voting group by class or series of shares;
    - (b) that is in alphabetical order within each class or series; and
    - (c) that shows the address of and the number of shares of each class and series held by each shareholder.
  - (4) A corporation shall maintain its records in written form or in any form capable of conversion into written form within a reasonable time.
  - (5) A corporation shall keep a copy of the following records at its principal office:
    - (a) its articles of incorporation currently in effect;
    - (b) its bylaws currently in effect;
    - (c) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
    - (d) all written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;
    - (e) a list of the names and business addresses of its current officers and directors;
    - (f) its most recent annual report delivered to the division under Section 16-10a-1607; and
    - (g) all financial statements prepared for periods ending during the last three years that a shareholder could request under Section 16-10a-1605.

Enacted by Chapter 277, 1992 General Session

**16-10a-1602 Inspection of records by shareholders and directors.**

- (1) A shareholder or director of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Subsection 16-10a-1601(5) if he gives the corporation written notice of the demand at least five business days before the date on which he wishes to inspect and copy.
- (2) In addition to the rights set forth in Subsection (1), a shareholder or director of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder or director meets the requirements of Subsection (3) and gives the corporation written notice of the demand at least five business days before the date on which he wishes to inspect and copy:
  - (a) excerpts from:
    - (i) minutes of any meeting, records of any action taken by the board of directors, or by a committee of the board of directors while acting on behalf of the corporation in place of the board of directors;
    - (ii) minutes of any meeting of the shareholders;
    - (iii) records of any action taken by the shareholders without a meeting; and
    - (iv) waivers of notices of any meeting of the shareholders, of any meeting of the board of directors, or of any meeting of a committee of the board of directors;
  - (b) accounting records of the corporation; and
  - (c) the record of shareholders described in Subsection 16-10a-1601(3).
- (3) A shareholder or director is entitled to inspect and copy records as described in Subsection (2) only if:
  - (a) the demand is made in good faith and for a proper purpose;

- (b) the shareholder or director describes with reasonable particularity his purpose and the records he desires to inspect; and
- (c) the records are directly connected with his purpose.
- (4) For purposes of this section:
  - (a) "proper purpose" means a purpose reasonably related to the demanding shareholder's or director's interest as a shareholder or director; and
  - (b) "shareholder" includes a beneficial owner whose shares are held in a voting trust and any other beneficial owner who establishes beneficial ownership.
- (5) The right of inspection granted by this section may not be abolished by a corporation's articles of incorporation or bylaws.
- (6) This section does not affect:
  - (a) the right of a shareholder or director to inspect records under Section 16-10a-720 or, if the shareholder or director is in litigation with the corporation, to the same extent as any other litigant; or
  - (b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.
- (7) A shareholder or director may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

Enacted by Chapter 277, 1992 General Session

**16-10a-1603 Scope of inspection right.**

- (1) A shareholder's or director's agent or attorney has the same inspection and copying rights as the shareholder or director represented by the agent or attorney.
- (2) The right to copy records under Section 16-10a-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.
- (3) Except as provided in Section 16-10a-1606, the corporation may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents to be provided to the shareholder or director. The charge may not exceed the estimated cost of production or reproduction of the records.
- (4) The corporation may comply with a shareholder's or director's demand to inspect the record of shareholders under Subsection 16-10a-1602(2)(c) by providing him with a list of the corporation's shareholders that complies with Subsection 16-10a-1601(3) and was compiled no earlier than the date of the shareholder's or director's demand.

Enacted by Chapter 277, 1992 General Session

**16-10a-1604 Court-ordered inspection.**

- (1) If a corporation does not allow a shareholder or director, or the shareholder's or director's agent or attorney, who complies with Subsection 16-10a-1602(1) to inspect or copy any records required by that subsection to be available for inspection, the district court of the county in this state in which the corporation's principal office is located, or in Salt Lake County if it has no principal office in this state, may summarily order inspection and copying of the records demanded at the corporation's expense, on application of the shareholder or director denied access to the records.
- (2) If a corporation does not within a reasonable time allow a shareholder or director, or the shareholder's or director's agent or attorney, who complies with Subsections 16-10a-1602(2)

and (3), to inspect and copy any records which he is entitled to inspect or copy by this part, then upon application of the shareholder or director denied access to the records, the district court of the county in this state where the corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County, may summarily order the inspection or copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

- (3) If a court orders inspection or copying of records demanded, it shall also order the corporation to pay the shareholder's or director's costs incurred to obtain the order, including reasonable counsel fees, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder or director, or the shareholder's or director's agent or attorney, to inspect the records demanded.
- (4) If a court orders inspection or copying of records demanded, it may:
  - (a) impose reasonable restrictions on the use or distribution of the records by the demanding shareholder or director;
  - (b) order the corporation to pay the shareholder or director for any damages incurred as a result of the corporation's denial if the court determines that the corporation did not act in good faith in refusing to allow the inspection or copying;
  - (c) if inspection or copying is ordered pursuant to Subsection (2), order the corporation to pay the expenses of inspection and copying if the court determines that the corporation did not act in good faith in refusing to allow the inspection or copying; and
  - (d) grant the shareholder or director any other available legal remedy.

Amended by Chapter 364, 2008 General Session

#### **16-10a-1605 Financial statements.**

Upon the written request of any shareholder, a corporation shall mail to him its most recent annual or quarterly financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-1606 Information respecting shares.**

Upon the written request of any shareholder, a corporation at its own expense shall mail to him the information specified by Subsection 16-10a-625(3), whether or not the information is also contained or summarized on any share certificate of the shareholder. The corporation may comply with this section by mailing articles of incorporation including the designations, preferences, limitations, and relative rights applicable to each class and series of shares and the authority of the board of directors to determine variations for any existing or future class or series.

Enacted by Chapter 277, 1992 General Session

#### **16-10a-1607 Annual report for division.**

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the division for filing an annual report on a form provided by the division that sets forth:
  - (a) the corporate name of the domestic or foreign corporation and any assumed corporate name of the foreign corporation;
  - (b) the jurisdiction under whose law it is incorporated;

- (c) the information required by Subsection 16-17-203(1);
  - (d) the street address of its principal office, wherever located; and
  - (e) the names of its principal officers.
- (2) The division shall deliver a copy of the prescribed form of annual report to each domestic corporation and each foreign corporation authorized to transact business in this state.
  - (3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
  - (4) The annual report of a domestic or foreign corporation shall be delivered annually to the division no later than the end of the second calendar month following the calendar month in which the report form is mailed by the division. Proof to the satisfaction of the division that the corporation has mailed an annual report form is considered in compliance with this subsection.
  - (5) If an annual report contains the information required by this section, the division shall file it. If a report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the annual report is considered to be timely filed.
  - (6) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the corporation.
  - (7) The annual report form provided by the division may be designed to provide a simplified certification by the corporation if no changes have been made in the required information from the last preceding report filed.
  - (8) A domestic or foreign corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information contained in its annual report as last amended.

Amended by Chapter 378, 2010 General Session

**16-10a-1608 Statement of person named as director or officer.**

- (1) Any person named as a director or officer of a domestic or foreign corporation in an annual report or other document on file with the division may, if he does not hold the named position, deliver to the division for filing a statement setting forth:
  - (a) his name;
  - (b) the domestic or foreign corporation's name;
  - (c) information sufficient to identify the report or other document in which he is named as a director or officer; and
  - (d) the date on which he ceased to be a director or officer of the domestic or foreign corporation, or a statement that he did not hold the position for which he was named in the corporate report or other document.

Enacted by Chapter 277, 1992 General Session

**Part 17**  
**Transitional Provisions**

### **16-10a-1701 Application to existing domestic corporations.**

Except as otherwise provided in Section 16-10a-1704, this chapter applies to all domestic corporations in existence on July 1, 1992, that were incorporated under any general statute of this state providing for incorporation of corporations for profit, and to actions taken by the directors, officers, and shareholders of such corporations after July 1, 1992.

Enacted by Chapter 277, 1992 General Session

### **16-10a-1702 Application to foreign corporations.**

A foreign corporation authorized to transact business in this state on July 1, 1992, is subject to this chapter, but is not required to obtain a new certificate of authority to transact business under this chapter.

Enacted by Chapter 277, 1992 General Session

### **16-10a-1703 Publication.**

- (1) The division shall annually publish copies of this chapter, together with applicable annotations and commentary, for sale and distribution to the public.
- (2) The division may charge a reasonable amount for copies of the chapter sold or distributed.
- (3) The proceeds from all sales and distributions shall be deposited into the Commerce Service Account created by Section 13-1-2, and may be appropriated to the division for use in defraying past or future production, publication, republication, or distribution costs.

Amended by Chapter 278, 2010 General Session

### **16-10a-1704 Saving provisions.**

- (1) Except as provided in Subsection (2), the repeal of any statute by this act does not affect:
  - (a) the operation of the statute or any action taken under it before its repeal;
  - (b) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
  - (c) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal; or
  - (d) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and any proceeding, reorganization, or dissolution may be completed in accordance with the repealed statute as if the statute had not been repealed.
- (2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.
- (3) The provisions of Subsection 16-10a-630(1) may not operate to deny preemptive rights to shareholders who, immediately prior to July 1, 1992, were entitled to preemptive rights by reason of the failure of the articles of incorporation of the corporation of which they are shareholders to deny preemptive rights, and the corporation shall be treated for all purposes as if its articles of incorporation included the statement "the corporation elects to have preemptive rights," until the date a resolution providing otherwise is approved by the same percentage of shareholders of each voting group as would be required to include the resolution in an amendment to the corporation's articles of incorporation. Any preemptive rights existing by virtue of Subsection (3) are subject to the terms and provisions of Subsection 16-10a-630(2).

- (4) The provisions of Section 16-10a-704 may not operate to permit a corporation in existence prior to July 1, 1992, to take action by the written consent of fewer than all of the shareholders entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:
- (a) by a consent in writing, setting forth the proposed resolution, signed by all of the shareholders entitled to vote with respect to the subject matter of the resolution; or
  - (b) at a duly convened meeting of shareholders, by the vote of the same percentage of shareholders of each voting group as would be required to include the resolution in an amendment to the corporation's articles of incorporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1705 Severability clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act is given effect without the invalid provision or application.

Enacted by Chapter 277, 1992 General Session